
(1951) 09 MAD CK 0003

In the Madras High Court

Case No : Civil Revision Petition No. 1411 of 1949

Governor-General in Council

APPELLANT

Vs

Ajithbhai Jayanthilal and Co. and Others

RESPONDENT

Date of Decision : 04-09-1951

Acts Referred:

Railways Act, 1890 — Section 77

Citation : AIR 1952 Mad 795 : (1952) 65 LW 133 : (1952) 2 MLJ 24

Hon'ble Judges : Basheer Ahmed Sayeed, J

Bench : Single Bench

Advocate : King and Partridge, for the Appellant; D. Ramaswami Iyengar and L. Krishna Das, for the Respondent

Final Decision : Dismissed

Judgement

Basheer Ahmed Sayeed, J.—This civil revision petition is by the Governor-General in Council owning the B. B. & C. I. Railway

represented by the General Manager seeking to set aside the decree passed by two Judges of the Presidency Small Causes Court, Madras, in a

New trial Application preferred by the respondent against the judgment of the Chief Judge of the Court of Small Causes, Madras, dismissing the

claim for loss sustained by the respondent by the failure of the company to deliver one bale of textiles.

2. Both the trial Judge as well as the two Judges who heard the New Trial Application came to the conclusion that the loss of one bale of textiles

consigned by the respondent was due to the misconduct of the Railway Administration itself and not by any other agency outside the Railway

Administration. Both are of the definite opinion that some of the railway employees were responsible for the loss of this one bale in question. The

misconduct of the employees of the Administration is certainly the misconduct of the Administration itself. On this point, there is no question raised

by the petitioner. Besides, it being a finding of fact, no question can be raised either.

3. The main question that has been argued before me by the learned counsel for the petitioner is that Section 77 of the Indian Railways Act has not

been complied with Section 77 lays down thus:

A person shall not be entitled to a refund of an over-charge 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 administration within six months from the date of the delivery of the animals or goods for carriage by

railway.

The learned trial Judge relying upon the language of the section has brushed aside the authorities quoted before him by the respondent and came to

the conclusion that he failed to see now a statutory requirement can be got over by an appeal to its objects & reasons, how ever, good it may be.

He further stated that no decision of this court had been cited to that effect before him. On the other hand, the two Judges who heard the New

Trial Application have placed reliance upon the decision in "Shamsul Huq v. Secy. of State", 57 Cal 1286 and "Govindlal v. Governor General in

Council", ILR (1947) Nag 369 and came to the decision that the object of the section and the intention of the Legislature underlying this section

should be looked into and that it should not be interpreted in too strict a manner to deprive the plaintiff of his legitimate right to claim the loss from

the Railway Administration for non-delivery of goods consigned.

The learned counsel for the petitioner has invited my attention to the decision in "East Indian Rly. Co. v. Jethmul", 26 Bom 669 which reversed the

judgment of Tyabji J. and held that the strict compliance of Section 77 was required before any person could be entitled to claim a refund or

compensation for the loss of property entrusted to the Railway Administration. If this decision had stood by itself, probably I would have been

inclined to agree with the learned counsel for the petitioner. But the learned counsel for the respondent invited my attention to a decision in "M. &

S. M. Rly. Co. Ltd. v. Haridoss Banmalidas", 41 Mad 871 which has also been cited by the learned counsel for the petitioner. In that decision at

page 884 Spencer J. has observed as follows:

If "destruction" is to include deliberate acts of the company, or its servants, I cannot see why the word "loss" should only apply to cases where the

goods have been mislaid. If the company is liable for negligence it must "a fortiori" be liable for wilful acts. I think the intention of the Legislature in

inserting Section 77 into the Act must have been that by requiring notice to be given before claims are put in, the company might have time to

investigate such cases and meet the claims of persons who have suffered loss, if possible out of court. The word "loss" in the English language, is,

in my opinion, sufficiently wide to cover cases where the goods are not forthcoming either from deliberate acts or from acts of negligence and I see

no reason to confine it only to cases of the latter kind.

4. In this case the finding, as already observed, has been that the loss has accrued due to the misconduct of the employees of the company to

whom the goods were originally consigned. In the above decision, Spencer J. made it clear that the intention of the section is merely to put the

company on notice so that time may be made available to the company to investigate such claims and meet such claims out of court wherever

possible. While this decision does not help to any extent the learned counsel for the petitioner, in my opinion, it does lay down the rule that should

be observed in considering whether the requirements of Section 77 have been complied with or not.

5. In "Mahadeva Aiyar v. S. I. Rly Co.", 45 Mad 135 Kumaraswami Sastry J. has observed while considering Section 140 of the same Railways

Act to the following effect: "The object of the section is to see that the company gets notice and there is no magic in the methods provided for by

the section to see that it reaches him if as a matter of fact the notice comes into his hands. Supposing the plaintiff adopts the method of sending the

notice by post without registration and "the agent admits receipt of the notice which is otherwise valid, there is no reason for holding that non-

registration is such a vital defect that it invalidates the notice.....

So far as notices of action are concerned, the substantial point is whether they reached the person to whom the law requires notice to be given and

the method by which he received it is a matter which is of comparative unimportance and a deviation from the methods prescribed in the section

will, in my opinion, be only an irregularity.....

He further goes on to observe: "'I am of opinion that "Woods v. Mehar Ali", 4 Mad L T 427; "Perianan Chetty v. South Indian Rly. Co.", 22 Mad

137; "M & S M Rly. Co. v. Bhimappa", 23 M.L.J. 511 and "Seshachalam Chetty v. Traffic Manager, the Nizam's Guaranteed State Rly. Co.",

36 Mad 65 were rightly decided, and would follow them in preference to the decisions that put a strict and legal literal interpretation on Clauses

(a), (b) and (c) of Section 140.'" No doubt, in that case, the question arose as to whether leaving a notice in the hands of the Traffic Manager of the

company was sufficient compliance of Section 140 of the Railways Act. Nevertheless, the principle as to the method or the form in which notice

should be considered sufficient to the railway administration has been laid down. What has been made applicable to Section 140, I fail to see why

should not be made applicable by analogy to Section 77 of the Act also. In this case, though direct notice was given to B. B. & C. I. railway only

in November 1946. still notice sent to the M. & S. M. Railway Co., had been given sufficiently in time and the M. & S. M. Railway had already

entered into correspondence with the B. B. & C. I. Railway long before the expiry of the period of six months required for the notice. Ex. P. 6 is

material in this connection. Under that document, the M. & S. M. Railway admitted that they were in correspondence with the foreign railways.

The question is whether notice of the loss of the goods belonging to the plaintiff had not been brought home to the B. B. and C. I. Railway by the

correspondence which had taken place between the M. & S. M. Railway and the B. B. & C. I. Railway and whether in those circumstances, the

B. B. & C. I. Railway could not be taken to have had notice of the loss in respect of which compensation was claimed. Following the principle laid

down in the two decisions cited above and also in "Shamsul Huq v. The Secy. of State", 57 Cal 1286 I am inclined to think that in such cases, the

intention of the Legislature in having inserted Section 77 in the Railways Act should be a very relevant consideration in deciding as to whether the

company had or had not notice of the loss suffered by the plaintiff. In "Snamsul Huq v. The Secy. of State", 57 Cal 1236 Lord-Williams J. stated

very definitely that "the object of the" section is to prevent dishonest claim for loss when, owing to delay, it might be impossible to trace the transaction and that it was intended as a weapon of defence against fraud, not as a means to enable the railway authorities to deprive their customers of their just dues." I entirely agree with this observation and I think that in the circumstances of the present case, these observations would apply. In addition to this, there is further the decision in "Govindlal v. Governor General in Council". ILR (1947) Nag 369, cited by the learned counsel for the respondent. Niyogi J. observed as follows in that decision:

Both the railway companies have admitted that the loss of one bale had occurred in transit. That admission itself dispenses with the enquiry into the validity or invalidity of the notice of the claim made by the plaintiff since as pointed out in "Shamsul Huq v. Secy. of State", 57 Cal 1286 Section 77 of the Railways Act is only intended to give an opportunity to the railway company to make satisfactory investigation.

No doubt, in that case, a notice was given to the Superintendent-General within six months and not to the railway administration as such, but it was considered sufficient to bind the railway company in terms of Section 77 of the Railways Act, even though the Superintendent General had not been technically authorised to receive notice under that section. But, in this case, both the Railway Administrations are part and parcel of the same system of railways administered who the plaintiff thought, was directly responsible to deliver the goods, should be considered sufficient when that notice had been somehow brought to the notice of the other administration from whom the plaintiff seeks to claim relief. The M. & S. M. Railway was until a certain stage thought to be the appropriate quarter where the plaintiff could lay claim for compensation. But, as it turned out that the proper quarter was B. B. & C. I. and as gathered from the evidence on record, the M. & S. M. Railway duly entered into correspondence with the B. B. & C. I. Railway and the B. B. & C. I. railway had notice of the loss of the property which should have been delivered to the plaintiff even long prior to the expiry of the six months period. It must be stated that the B. B. & C. I. railway had notice and that Section 77 of the Act had been sufficiently complied with considering that the object of the section was not to deprive customers of their legitimate right but only to

enable the railway administration to have sufficient time to investigate the claim set up without allowing the parties to resort to litigation.

6. In this view, I think that the decision of the two Judges of the Small Cause Court has to be upheld and this petition has to be dismissed, and is accordingly dismissed. The petitioner will pay the respondent's costs.