

(1948) 09 PAT CK 0025
In the Patna High Court

Governor-General of India in Council	APPELLANT
Vs	
Sukhdeo Ram Marwari and Another	RESPONDENT

Date of Decision : 14-09-1948

Acts Referred:

Railways Act, 1890 — Section 3(6), 80

Citation : AIR 1949 Patna 329

Hon'ble Judges : Sinha, J; Das, J

Bench : Full Bench

Judgement

Sinha, J.—This is a defendant's second appeal from the concurrent decisions of the Courts below decreeing the plaintiffs' suit for damages for short delivery.

2. The facts found in this case are as follows: The plaintiff, respondents consigned 600 tins of coconut oil to the South India Railway for delivery at Monghyr Railway Station on the East Indian Railway. The consignment had to traverse three railway systems, namely, the South Indian Railway, the Bengal-Nagpur Railway and, finally, the East Indian Railway. On reaching Monghyr, the consignment was found short by 25 tins. The plaintiffs claimed damages for this short delivery.

3. The suit was contested on various grounds by the defendant, representing the East Indian Railway; but it is necessary now only to consider the defence that the East Indian Railway was not liable for the loss in respect of which the claim had been made.

4. It has been found by both the Courts below that the shortage occurred either at Adra or at some place ahead of that station, that is to say, they found that the loss did not occur on the East Indian Railway. Therefore, the finding amounts to saying that the loss may have taken place either on the South Indian Railway or on the Bengal-Nagpur Railway before the consignment was handed over to the East Indian Railway. On these findings, the trial Court held that the Governor-General in Council was liable, in view of the fact that all these three railway

systems are now State-managed, and it did not matter where the loss took place. It relied upon Clause (6) of Section 3, Railways Act (IX [9] of 1890) defining the term "railway administration." It appears that the trial Court attempted to get over the provisions of Section 80 of the Act by referring to the definition clause of the term "railway administration." The lower appellate Court rightly disagreed with the trial Court on this part of the case, and held that Section 3(6), Railways Act did not affect the question of liability which is dealt with by Section 80 of the Act. But the lower appellate Court got over the specific provisions of Section 80, Railways Act by a reasoning which is not very easy to follow. In this connection, the lower appellate Court has made the following observations:

But Section 80, Railways Act lays down about the liability of a particular Railway or Railways in connection with a particular consignment. When a consignment is to run over two consecutive Railways, the first Railway to which the consignment is made is the agent of the second Railway by which the goods are to be delivered to a consignee who has a right to suit against both the Railways for any loss occurred, as the principal is ordinarily liable for the act of his agent (vide *Arjun Das-Gulab Rai Firm Vs. E.I. Railway Co.*, . The principle underlying Section 80, Railways Act is that a Railway which takes delivery of goods with an undertaking to carry it safe is an agent for the Railways over which the goods have to pass in order to reach destination. The consignor is a third person. He contracts with a particular Railway to deliver to him at a particular station the goods consigned; and the arrangement of carrying the goods is between or among the Railways over which the goods have to pass and has nothing to do with the consignor. In view of such principles of law, I think that although the shortage of 25 tins of cocoanut oil in question has been made out not to have occurred on the E.I. Railway, but on the other Railways, the E.I. Railway is also liable to make good the loss of the plaintiffs on account of shortage in question. Thus I hold that the Court below has rightly allowed decree against the defendant.

5. This second appeal was placed before me sitting singly, and I directed that the case be placed before a Division Bench for hearing.

6. Before us, the learned Counsel for the appellant has contended that the suit was not maintainable against the East Indian Railway alone when three railway systems were involved in this transaction. In my opinion, this is not a question of maintainability of the suit but of whether, on the facts found, the plaintiffs can get any relief as against the East Indian Railway Administration. This case must be governed by the provisions of Section 80, Railways Act which makes a specific provision for a case like the present. It provides that, notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of goods, which were booked through over the railways of more than two railway administrations, may be brought either against the

railway administration to which the goods were delivered or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred. It is manifest, on a bare perusal of the section, that the South India Railway was the most necessary party to the suit. The other railway administrations would also be proper parties or even necessary parties according as the facts ultimately turn out to be. The consignor may not be in a position to know on which railway the loss in question occurred; but the section makes it absolutely clear that his rights, if any, can be enforced against the railway administration to which the goods had been consigned. The section gives an alternative remedy to a person in the position of the plaintiffs in the present case by providing that his claim might be made against the railway administration on which the loss occurred, which may be other than the railway to which the consignment was delivered for carriage. In this case the plaintiffs chose to implead the Governor-General of India in Council as representing the East Indian Railway. If they had impleaded the defendant as representing all the three railway administrations, after having given the necessary notices as required by the Railways Act and the Code of Civil Procedure, the question now in controversy between the parties would not have arisen. But the East Indian Railway Administration can be made liable only if it is proved by the plaintiffs that the loss occurred on that railway. But, if anything has been found definitely by the Courts below in this case, it is that the loss in question occurred not on the East Indian Railway but on one or other of the two railway administrations concerned. Hence, on a plain reading of the provisions of Section 80, Railways Act, the conclusion is irresistible that the East Indian Railway is not liable.

7. But the learned advocate for the plaintiff-respondents has relied upon certain observations in *Arjun Das-Gulab Rai Firm Vs. E.I. Railway Co.*, and *Jamunadas Ramjas v. E.I. Rly. Co. Ltd.* AIR 1933 Pat. 630, both judgments of single Judges of this Court, in support of his contention that, with reference to the theory of agency, the liability of the East Indian Railway Administration is established in this case. Hence, it is necessary to examine those rulings. Foster J., who delivered the earlier judgment in the case of *Arjun Das-Gulab Rai Firm Vs. E.I. Railway Co.*, observed as follows:

It is also necessary in this connection to remember why it is that u/s 80, Railways Act, the consignee has a right of suit against the Assam Bengal Railway, to which Railway the goods were delivered by the consignor thereof, as well as a right of suit against the particular railway administration on whose railway the loss occurred. The reason is that the Assam Bengal Railway was in the matter of this consignment agent of the East Indian Railway which was finally to deliver the property to the consignee, The principal would ordinarily be liable for the negligence of his agent and the person who suffers the loss would also have the option of suing the agent himself who had been negligent. That is the reason for the provisions of Section 80, Railways Act.

In the later decision, *Jwala Prasad J.* made the following observations at page

634:

The principle underlying Section 80 is this: that the railway which takes delivery of goods with an undertaking to carry it safe is an agent for the railways over which the goods have to pass in order to reach its destination and vice versa. The consignor is a third person. He contracts with the particular railway to deliver to him at a particular station the goods consigned and the arrangement of carrying the goods is between the railways over which the goods has to pass and has nothing to do with the consignor. Therefore the deterioration in this case having occurred to the plaintiff at the place where the goods had to be delivered back, namely the B.N. Railway, that railway is as much liable as the E. I. Railway, the original undertaker, to carry the goods safely. Therefore under the law and upon a true construction of Section 80, the B.N. Railway was equally liable as the E.I. Railway jointly and severally; and as the E.I. Railway is being absolved upon the ground that the Secretary of State for India in Council though a necessary party was not impleaded in the suit, the liability of the B.N. Railway remains and therefore the plaintiff is entitled to a decree against the B.N. Railway.

8. As the learned Judge is there reported to have held both the railway administrations jointly and severally liable, the learned Counsel for the respondents has contended that in the present case also the East Indian Railway Administration, which was actually sued, is jointly and severally liable with the other railway administrations not sued, and that it was at the option of the plaintiffs to choose the party against whom they could seek their remedy. Is it correct in law to say that the liability of all the railway administrations concerned in the carriage of goods is joint and several? In my opinion there is no warrant for this conclusion in the provisions of Section 80, Railways Act. That section has given the plaintiff the choice of claiming his remedy either against the railway administration to which the goods were consigned or against the railway administration on which the loss occurred. The remedy is alternative, and not cumulative. In the present case the goods were carried over three railways. Can it be said that the plaintiffs had the right of suit against any one of those three? u/s 80, in all cases they could sue the South India Railway to which the goods had been consigned, irrespective of the question whether or not the goods were lost on that railway. In my opinion, that railway has been made responsible by the statute because the consignor entered directly into a contract with that railway for the safe carriage and delivery of the goods. The contract with the South India Railway, in so far as it related to its own administration, would be in the capacity of the principal. That railway may be said to be the agent of the Bengal Nagpur Railway and the East Indian Railway in respect of the goods for the purpose of carriage on those railways. If the goods were lost on the South India Railway that railway would be liable both because it was the contracting party and because it was at fault. But, if the goods were lost on the Bengal Nagpur Railway, on what grounds should the South India Railway be responsible? Not on the theory of agency. The principal is liable for the negligence of the agent; but the agent is not liable for the negligence of the principal. Similarly,

with respect to the loss, if supposed to have taken place on the East Indian Railway. Hence, it cannot be said that in so far as Section 80, Railways Act has made the South India Railway Administration in the present case liable, it is with reference to any theory of agency. The actual decision in the case of *Jamunadas Ramjas v. E.I. Rly. Co. Ltd.* A.I.R.1933 Pat. 630, may be justified on the ground that in that case the deterioration had occurred on the Bengal Nagpur Railway. But the observation of his Lordship to the effect that both the railway administrations were jointly and severally liable is not, in my opinion, correct as a rule of general application. The observations of a Division Bench in the case of *Bengal and North Western Ry. Co. Ltd. Vs. Kameshwar Singh Bahadur*, are in consonance with the view that I propose to take in the present case, namely that the suit may be brought either against the company with whom the contract for carriage was directly made or against the railway administration on whose railway the loss occurred. Their Lordships further observed that such a suit is not based on tort but on statutory liability which attached to the contract, though that contract had been made with a railway other than the defendant to the suit.

9. As will presently appear, the question of the relationship as between the different railways on which the consignment may have been booked through has been viewed in different ways in different circumstances. In the case of *Gujendro Mohan Shaha v. Eastern Bengal Rly. Co.* 18 W.R. 145, a Division Bench of the Calcutta High Court dismissed the plaintiff's suit for damages in respect of goods booked on the I. G.S.N. Company, which goods were to be delivered by the East Bengal Railway Company at Sealdah. The loss occurred on the railway company after the goods had been made over by the I.G.S.N. Company to the railway company. The suit was dismissed on the ground that there was no privity of contract between the plaintiff and the railway company who was the only defendant. That decision was affirmed by their Lordships. In the case of *Kalu Ram Maigraj v. The Madras Railway Company* 3 Mad. 240, Kindersley J. held that, where goods were received by one railway administration for carriage and delivery at a station on another railway system, the receiving company does not thereby become, in relation to the consignor, the agent of the delivering company. To the same effect is the decision of the House of Lords in the case of *Bristol and Exeter Rly. Co. v. Collins* (1859) 7 H.L.C. 194 and *Muschamp v. Lancaster and Preston Junction Railway Co.* (1841) 8 M. & W. 421. Some of the cases referred to above were followed by a Pull Bench of the Allahabad High Court in the case of *Chunni Lal v. Nizam's Guaranteed State Rly. Co. Ltd.* 29 ALL. 228. In this case, Stanley C. J. was inclined to treat the receiving company as the principal and the delivering company as the agent. He made the following observations:

When a railway company receives and undertakes to carry goods from a station on its railway to a place on another distinct railway with which it communicates, this is evidence of a contract with the receiving company for the whole distance, and the other railway company will be regarded as their agents and not as contracting with the bailor.

On the other hand, a Division Bench of the Bombay High Court in the case of the G.I.P. Rly. Co. v. Radhakishan Khushaldas 5 Bom. 371, after discussing the conflicting views expressed in the different Courts in England, was inclined to the view that the receiving company should be treated as the agent of the defendant company, when the former made a contract for the carriage of goods with the plaintiff for the whole distance covered by the two railway administrations.

10. In the Calcutta High Court in the case of Narang Rai Agarwalla v. River Steam Navigation Co. Ltd. 34 Cal. 419, Bratt J. was inclined to take the view that it was a case of mutual agency, that is to say, the receiving company becoming the agent of the delivering company and vice versa. But he was further inclined to hold that the contract could be divisible into two parts according as the portions of the journey of the consignment lay. This view would seem to run counter to that of the Full Bench of the Allahabad High Court in the case of Chunni Lal v. The Nizam's Guaranteed State Rly. Co. Ltd. 29 ALL. 228, already referred to, in which case the Chief Justice of the Allahabad High Court treated the contract as an indivisible one, that is to say, one single contract. In a more recent decision of the Calcutta High Court in the case of Dekhari Tea Co. Ltd. v. Assam Bengal Rly. Co. Ltd. AIR 1920 Cal. 758, Rankin J. (as he then was) considered the English cases, and made the following observations at pp. 19-20 after having held, in the special circumstances of the case before him, that there was one single contract:

The basis, however, of the above decisions is that it would be a strained and improbable inference to hold that a sender on an ordinary "through booking" transaction enters into a series of contract with carriers 1, 2 and 3 making each carrier except the last his agent to make further contract, or treating him as the next carrier's agent to make a further contract with the sender. If it be said that though there is an entire contract with the first carrier for the whole journey, yet there may also be a contract with each of the other carriers for their own part of the transit, this no doubt is true. But as an inference it is still more elaborately improbable. It involves a contract and a parallel series of other contracts. This series has to be operated either by each carrier being treated as the sender's agent to contract with the next which involves a doubtful scheme for the transmission of authority; or else by each carrier being treated as having made the previous one (or perhaps the first one) his agent to contract on his behalf, while himself being the previous carrier's agent to perform. Again this latter view is possible and in some cases it is right, Such a position is a quasi partnership and is illustrated by Gill v. M.S. & L. Rly. Co. (1873) 8 Q.B. 186 and G.I.P. Rly. v. RadhaKishan 5 Bom. 371. It has been put in argument that where for their mutual advantage two companies are in the habit of handling through traffic for a reward to be divided in proportions there is in substance a quasi partnership and each is the agent of the other to contract. I do not agree.

This brief review of the Indian case law on the subject demonstrates the fact that there is a wide divergence of judicial opinion on the question of the exact relationship between the consignor and the receiving railway and the other

railway systems over which the goods may have to be carried in order to reach their destination. Hence, it may be said that the legislature intervened in the year 1890, and laid down a specific rule of law governing the liabilities of the different railway administrations as regards compensation for loss, etc., caused to the owner of the goods carried over those several railway systems. Section 80, therefore, being a specific provision in this behalf must be given effect to, irrespective of any other considerations based on the doctrine of agency or of partner, ship which may lead to conflicting results. When the legislature has intervened to make the position absolutely clear, it is not safe to appeal to certain doctrines of law of general application.

11. In similar circumstances, the Allahabad High Court, in a series of decisions, has taken the same view: see the cases of Koka Mal v. G.I.P. Rly. Co. 21 I.C. 428 G.I.P. Rly. v. Sham Manohar 34 ALL. 422 Sri Gangaji Cotton Mills Co. Ltd. v. E.I. Rly. Co. AIR 1922 ALL. 514 and G.I.P. Rly. v. Jugal Kishore Mukat Lal AIR 1930 ALL. 332.

12. To similar effect are the decisions of a number of single Judges of the Madras High Court in the cases of South Indian Railway Co. Ltd. Vs. Nanjiah Narayanaswami Pillai, The South Indian Railway Co., Ltd. Vs. Krishnaswami Naidu and Brothers, M.A.P. Palanichami Nadar Vs. The Governor-General of India in Council, and The Madras and Southern Mahratta Railway Vs. Padmanabhuni China Nagiah and Company, .

13. The learned Counsel for the respondents has not been able to place before us a single decision of any High Court in India where a decree has been passed against a railway administration which was not the receiving company, to which the consignment was delivered, and the loss has not been proved to have taken place on that railway. Hence, it would appear that there is neither principle nor precedent in support of the contention raised on behalf of the plaintiff-respondents.

14. As a result of these considerations, it must be held that the decision of the Court below is erroneous in law. The appeal is accordingly allowed, and the suit dismissed with costs throughout.

Das J.

I agree.