
(1991) 11 MAD CK 0049
In the Madras High Court
Case No : A.S. No. 825 of 1981

Graphite India Ltd. and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-11-1991

Acts Referred:

Railways Act, 1989 — Section 140, 78

Citation : (1993) ACJ 988 : (1992) 2 LW 361

Hon'ble Judges : E.J. Bellie, J

Bench : Single Bench

Final Decision : Allowed

Judgement

E.J. Bellie, J.—Against the dismissal of the suit the plaintiffs have filed this appeal. The suit is against the Railways for recovery of compensation of Rs. 44,000/- for the damage caused to the goods delivered to the Railways for transport.

2. According to plaintiffs, (i) Graphite India Limited and (ii) New India Assurance Co. Ltd., Seimon's India Limited, Bombay, entrusted five consignments of transformers and earth cables to the Railways to be transported from Wadibunder, Bombay, to Krishnarajapuram as per railway receipts dated 29.12.1971, 21.1.1972, 25.1.1972, 29.1.1972 and 8.2.1972. The consignments were intended for the first plaintiff. The said consignments reached Krishnarajapuram in or about March, 1972, but since there was no crane facility for unloading the consignments, the consignments were re-booked from there (Krishnarajapuram) to Bangalore Cantonment in continuation of the previous bookings as per railway receipts dated 1.3.1972, 1.3.1972, 1.3.1972, 2.3.1972 and 24.3.1972. When at the Bangalore Cantonment Station the consignments were unloaded it was seen that the consignments were in a tampered and damaged condition. The delivery station authorities gave open delivery. It was found that many items were missing and damaged in all the consignments and the delivery station authority issued open delivery certificates, four of them

dated 6.4.1972 and the remaining one dated 12.4.1972. The consignments had been handed over to the Railways at Wadibunder in Bombay in sound condition and they were all packed to the satisfaction of the railway authorities who had issued the railway receipts without remarks. Therefore, the damage should have occurred during the time when the consignments were in the custody of the railway. The total value of the short delivery and damaged goods including the cost of repairs and replacements came to be Rs. 44,000/- approximately. The first plaintiff claimed this amount under a letter dated 31.8.1972 as required u/s 78-B of the Indian Railways Act but no amount was paid. The second plaintiff with whom the consignment had been insured, on payment of settlement of the claim, has been subrogated to the rights and remedies relating thereto. There is thus due a sum of Rs. 44,000/- from the defendants to the plaintiffs. Hence this suit.

3. This defendant Railways contested the suit contending, inter alia, as follows:

The railway administration is not at all liable for any damage or loss to the consignments, and no claim was preferred in time as required u/s 78-B read with Section 140 of the Indian Railways Act.

4. The trial court on consideration of the evidence adduced found that it was the defendant Railways that was responsible for the non-delivery and damage caused to the consignments and the plaintiffs are entitled to the amount of Rs. 44,000/- claimed as compensation. It further held that the suit is not barred by limitation as contended by the defendant. However, holding that the notice sent by the plaintiffs u/s 78-B of the Indian Railways Act is not in time, it found that the suit is barred under that section. It, therefore, dismissed the suit. Hence this appeal by the plaintiffs.

5. Mr. David, learned counsel appearing for appellants-plaintiffs, contends that the one finding of the trial court that the claim made u/s 78-B of the Indian Railways Act is not in time upon which the suit has been dismissed, is erroneous. This was the only point upon which both sides argued in the appeal.

6. As per Section 78-B a person shall not be entitled to compensation for the damage or non-delivery, etc., of the goods entrusted to the Railways unless a claim has been made within six months from the date of delivery of the goods for carriage to the Railways. In this case the plaintiffs have in fact made a claim under Exh. A-35. But the question is whether this claim is made within six months from the date of delivery of the goods to the Railways.

7. According to the trial court, the goods were delivered as per the railway receipts, Exhs. A-19 to A-23 dated 29.12.1972, 21.1.1972, 8.2.1972, 25.1.1972 and 28.1.1972. While Exh. A-35 claim is dated 30.8.1972 and this would show that even computing the time from the latest delivery under the receipt dated 8.2.1972 the claim is beyond six months time.

8. It was contended before the trial court on behalf of the plaintiffs that the time

should be computed from the date of rebooking at Krishnarajapuram and not from the date when the goods were originally delivered at Wadibundar, Bombay. If the time is to be computed from the date of it is not in dispute that the claim u/s 78-B will be in time. This contention of the plaintiffs was rejected by the trial court. I do not think that the trial court is correct in doing so.

9. As in this case as per the original receipts, Exhs. A-19 to A-23, the consignments were to be unloaded at Krishnarajapuram. But there they were not unloaded but instead were rebooked under fresh railway receipts, Exhs. A-24 to A-28, to be transported to Bangalore Cantonment. The original contract for transport under Exhs. A-19 to A-23 was for transporting and delivering the goods by the Railways at Krishnarajapuram. But delivery did not take place there, and a new contract of transport was entered into under railway receipts, Exhs. A-24 to A-28. Quite reasonably it must be deemed that as far as the new contract, i.e., rebooking is concerned the goods were delivered to the Railways only at Krishnarajapuram and on the dates borne by the railway receipts, Exhs. A-24 to A-28. The claim made under Exh. A-35 must be held to be as regards the new Or fresh contract under Exhs. A-24 to A-28. Even in the notice Exh. A-35, the plaintiffs have made it clear that the claim is in respect of the goods booked from Krishnarajapuram to Bangalore Cantonment.

10. A similar case occurred in *Brij Gopal v. Governor-General in Council* ILR 1950 All 132. In that it was held that the six months must be computed from the date of rebooking. This decision strengthened my view. Therefore, the trial court is wrong in holding that the claim u/s 78-B has not been made within six months from the date of delivery of the goods. As stated above, no other point was argued by either side.

11. The result is, the judgment of the trial court dismissing the suit is set aside and the suit is decreed as prayed for with costs. The appeal is thus disposed of. No costs.