

(1958) 07 AP CK 0007

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 97/4 of 1956

Haji Mohamad Jamaluddin Brothers

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-07-1958

Acts Referred:

Contract Act, 1872 — Section 151, 152, 161
Railways Act, 1890 — Section 47(1), 72

Citation : AIR 1959 AP 84

Hon'ble Judges : Qamar Hasan, J

Bench : Single Bench

Advocate : K.R. Kuppuswamy Iyengar, K.P. Narasimham and N. Narasimham Iyengar, for the Appellant; Sivastava, for the Respondent

Final Decision : Allowed

Judgement

Qamar Hasan, J.—The firm of Lal Brothers through a Railway Receipt dated 10-10-1953 despatched from Aligarh two cases of locks with keys to Muhammad Jamaluddin and brothers. The consignment) reached Secunderabad, on 9-11-1953. The consignee, however, received the Railway Receipt on 24-12-1953. On the succeeding day, the carting agent of the consignee, P. W. 2 approached the clerk concerned to take delivery of the consignment but was called upon to pay the freight and wharfage charges due on that date.

He, however, was asked to come next day. On that date he was told that no delivery could be effected since the consignments were missing. On 28-12-1953 the consignee, petitioner herein, addressed a notice to the Claims Superintendent demanding Rs. 333-3-0 as damages for the loss of .the locks. The Claims Superintendent through his letter dated 30-1-1954 disowned every liability by replying-

"My inquiries reveal that the above consignment was received at Secunderabad en 9-11-1953 and was available since then. However, you turned up and took delivery only 25-12-53 and not removed them the same day, and the cases were

found missing on 26-12-53."

The petitioner in his reply of 12-2-1954 protested stating that after the freight and wharfage charges were realised, the agent was asked to come on 26-12-53 and was then told that the goods were missing. He, therefore, asserted that no fault could be laid at his door. This time the Claims Superintendent refused to comply with the request on the ground that-

"The time allowed for delivery free of wharfage expired on 10-11-53 and the cases were found missing after the expiry of free time allowed when it was lying in the goods shed awaiting delivery. You, however, turned up for delivery on 25-12-53, after the expiry of the time allowed free of wharfage.

As per Rule 30 (2) of I. R. C. A. Goods Tariff No. 28 which is reproduced below, I have to state that railway administration is not responsible for the alleged loss which took place after the expiry of the time allowed free of wharfage."

The petitioner by his reply dated 12-2-1954 pointed out the discrepancy in the statement of facts contained in both the replies given by the Claims Superintendent and protested against the shifting of ground. Having despaired of getting compensation for the admitted loss of goods he instituted the present suit in the Court of the Subordinate Judge, Secunderabad.

The respondent did not plead what the Claims Superintendent has stated in his reply dated 30th January 1954, but relying on Rule 30 (2) of I. R. C. A. Goods Tariff No. 28 asserted that the railway administration was not responsible for the loss inasmuch as the delivery was not taken by the petitioner within the period prescribed by the rule.

2. The learned Subordinate Judge gave effect to the plea and dismissed the suit, by his judgment and decree dated 17-1-1956. It is against this decision that the plaintiff petitioner has filed the instant revision petition.

3. Now Rule 30 (2) reads as follows: "The Railway Administration hereby give public notice that in respect of goods/articles not removed from Railway premises at station or destination within the time allowed free of demurrage and wharfage the Railway is not liable in any respect for any loss, destruction, deterioration of or damage in such goods/articles arising from whatever cause notwithstanding that the Railway shall be entitled to be paid the authorised charges for goods/articles so left on their premises." The learned advocate for the petitioner argued that the above rule was ultra vires the rule-making power conferred by Section 47(f) of the Railways Act. In support of that contention he relied on Governor-General in Council v. Jagan Nath, AIR 1943 Lah 244 . Dhawan J., who decided the case, held that such a rule was inconsistent with the Railways Act and contravened the legal liability of the Railway.

The learned advocate for the respondent on the other hand placed reliance on Vidya Sagar v. Governor-General in Council AIR 1949 Lah 166 , where the plaintiffs had allowed a period of six weeks to elapse after the arrival of goods

before they asked for delivery thereof and they were lost. Achhru Ram I., did not decide the question whether the view of Dhawan J., was correct but following B.N.W. Railway Co. and Another Vs. Mul Chand, and Secy. of State v. Harikishen Das Kura Mal, ILR 7 Lah 370: (AIR 1926 Lah 575 (2)), held that independently altogether of the provisions of Rule 28 (2), the Railway Administration's liability remained in force only for the period during which the goods remained in transit and for a reasonable period after their arrival at the destination and that after the expiry of such reasonable time there was no legal obligation imposed on the Railway Administration to look after the goods or account for them.

4. In the case of B.N.W. Railway Co. and Another Vs. Mul Chand, , a period of 20 days had been allowed by the consignee to elapse before asking for delivery of the goods. In the other case i.e., ILR 7 Lah 370: (AIR 1926 Lah 575 , delivery was asked by the consignee seven days after the arrival of the consignment at the destination. It was held that the Railway administration was not liable for the loss suffered by the consignee. The Court in this case held that it is not the business of the Railway Administration to work as a warehouseman or a bailee for hire. Its proper function is that of public carrier and it is only held responsible as a bailee.

The duty as a carrier is discharged on the arrival of the goods at their destination and it is not for the Railway Administration to keep the goods after that as warehouseman or bailee for hire. The consignee must take the delivery during the time fixed by the rules and if he neglects to do so, the Railway Administration can claim demurrage and not hire.

5. The view held by Achhru Ram J., in AIR 1949 Lah 166 , had found favour with the Division Bench of the Calcutta High Court in the case of Lalji Raja and Sons v. Governor-General of India, 54 Cal WN 902 (E). The learned Subordinate Judge has referred to Chhatumull Chowthmull Vs. Union of India (UOI), . In the case the learned Judges had to deal with two questions, firstly, what is the effect of laches on the part of the consignee or his agent in demanding delivery of goods and secondly, whether after the liability of the carrier strictly so called has ceased, there has or has not arisen liability on a further contract of bailment arising from the fact that the Railway continues to keep the goods.

On first question it was held that where the consignor's representative fails to take delivery within a reasonable time after it is ready for delivery the liability of the carrier ceases. On the second question they noticed Rule 3 of the Rules for wharfage which runs as follows :

(i) A wharfage charge may be levied in respect of all goods not removed from Railway premises before closing time of the day following that on which they are made available for delivery.

(ii) The charge referred to in Sub-rule (1) shall not exceed per day or part of a day, one anna per maund or part of a maund calculated.

(a) Where freight is levied on weight, upon such weight, and (b) where freight is levied on the vehicle in or on which the goods are carried upon the carrying capacity of such vehicle.

(iii) The goods shall be warehoused either under cover or in the open as apace may be available"

and observed that it cannot be said in the face of these facts of realisation of wharfage charges under the rules which purport to regulate the terms and conditions upon which the Railway Administration will warehouse goods on behalf of the consignee or the owner, that the Railway was not acting as bailee and that was a clear case of fresh contract of bailment as warehousemen.

Reliance was placed upon Bengal and North-Western Ry. v. Mulchand (C), Secy. of State v. Harkishan Das Kura Mall (D). and Lalji Raja and Sons v. Governor General of India (E) The former two cases were dissented from on the ground that they entirely overlooked the provisions of law under which charges for demurrage and wharfage are realised. The last case was explained on the ground that it did not appear from the report of the case that wharfage and demurrage were paid.

6. There are two sections which directly bear upon the controversy in question between the parties. Section 72 of Hallways Act provides :

"(1) The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of the Act, be that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 (IX of 1872).

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(3) Nothing in the common law of England or in the Carriers Act, 1865, regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility as in this section defined of a railway administration." It would thus appear that the extent of the liability of railways for carriage of goods differ in India from that under the law in England in certain respects. Under the English law a common carrier is responsible for safety of the goods entrusted to him in all events except for act of God or the King's enemies, in India the legal position is different.

Indian Railways are free from the high degree of liability imposed on a common carrier in England. Their liability in a case not affected by contract and any other provision in the Railways Act, starts only at the level of the liability of bailee, that is to say, to take as much care of the goods entrusted to them for carriage as a man of ordinary prudence would be expected to take care of his goods. This is the effect of the express statutory legislation contained in Section 72(d) and (3) of the Railways Act read with Sections 151, 152 and 161 of the Contract Act.

Section 152 of the Contract Act provides that the bailee, in the absence of a

special contract is not responsible for the loss or destruction or deterioration of the thing bailed, if he has taken the amount of care of it, described in Section 151. Bailee's responsibility when goods are not duly returned or delivered is being dealt with in Section 161 as follows:

"If by the default of the bailee the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time."

It is to be noticed that this section employs the expression "proper time" and the responsibility of the bailee is to commence from "that time". There must therefore be some definiteness about the time contemplated by the section. It seems difficult for me to hold that "proper time" is the same thing as "reasonable time". To incorporate the latter expression in Section 161 would be tantamount to introducing something which the legislature had not thought fit to use. Section 47 of the Railways Act empowers every railway and in the case of a railway administered by the Government, an Officer to be appointed by the Central Government in this behalf, to make rules consistent with the Act, inter alia for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner.

7. It was suggested on behalf of the respondent that Rule 30(2) as referred to above fulfils the purposes of Section 161 with regard to the fixation of maximum time allowable for taking delivery of the goods. But unfortunately, Rule 30(2) is not a rule. It purports to be a public notice. A public notice cannot have a binding force unless it is issued in pursuance of the rule.

The respondent's learned advocate has not pointed out to me any rule under which the notification might be said to have been issued. In this view of the matter the learned advocate for the respondent does not appear to be justified in insisting that the cases of locks ought to have been taken delivery within the time mentioned in the notification. But this aspect of the case need not detain me any longer. According to the admission contained in Ex. P-4 i.e., the reply of the Claims Superintendent dated 30-1-1954, as the goods were available for delivery till 25-12-1953 and were in fact taken delivery of on that date but not removed, the question of the consignee not turning up within the reasonable time would not arise.

The question that arises for determination is whether there was a fresh contract of bailment be-cause of the realisation of wharfage and freight by the Railway Administration from the petitioner. As has been held in *Chatumull Chowthmull v. Union of India*, (F) a contract of fresh bailment came into being by force of Rule 3 of the Rules for wharfage.

If the goods were lost between 25th and 26th December 1953 the burden was upon the respondent to prove that proper care had been taken of them as required by Section 151 of the Contract Act. The solitary witness produced by the respondents does not say a single word in that behalf and he is not in a position

to say when and ow the goods were lost except that the matter had been reported to the police.

8. In these circumstances, I would allow the revision petition, set aside the order passed by the Subordinate Judge and decree the suit with costs here and below but without interest. The decree will be satisfied by the respondent within three months from the date of the decree.