

(1949) 01 CAL CK 0039
In the Calcutta High Court
Case No : Civil Rule No. 991 of 1948

H.K. Ray

APPELLANT

Vs

Governor-General of India in Council

RESPONDENT

Date of Decision : 19-01-1949

Acts Referred:

Citation : (1949) 01 CAL CK 0039

Judgement

Chakravartti, J.—The sole point canvassed in this rule was one of limitation. There is no dispute about the facts. In November 1943, the petitioner made a journey from Amritsar to Ranchi with a "through" ticket and on the way, broke journey at the Benares Cantonment Station on the East Indian Railway to have a look round the city. When leaving the station, he deposited his luggage in the Cloak-room and was granted a "Left luggage" ticket which entitled him to get back his articles on demand. When he made the demand later on the same day, he was informed that his luggage had been, by mistake, delivered to another person. That person was traced and it transpired that he had been unable to produce any ticket, but had been allowed to take away the petitioner's luggage on executing an indemnity bond. A criminal proceeding resulted in conviction of the man, but only a few of the petitioner's articles were recovered and those too were in such a damaged condition that the petitioner refused to accept them. According to the petitioner, the value of the goods contained in his luggage was Rs. 1,816. As his claim was not paid in spite of repeated demands, he brought a suit against the Railway for the recovery of Rs. 1,816, together with costs. The loss occurred on 6th November 1943, and the demand for return of the luggage was also made on that day. The suit was brought on 9th February 1945, in the Court of Small Causes, Calcutta.

2. The Railway admitted the facts, but pleaded limitation and further pleaded that, in any event, the claim was exaggerated.

3. The trial Judge gave effect to the plea of limitation. He held that all suits for compensation against a Railway for goods delivered to it and lost were governed

by Arts. 30 and 31, Limitation Act. Whichever of the two articles applied, the period of limitation was one year and, accordingly, the present suit was barred by time. Having regard to the view he took on the question of limitation, the learned Judge considered it unnecessary to ascertain the quantum of damages sustained.

4. The petitioner then applied for a new trial which was granted, but ultimately the Full Bench upheld the decision of the trial Judge. The learned Judges held that the suit was against a carrier, for the Railway, when it accepted the petitioner's luggage for safe custody, did not shed its character of carrier and become a mere deposittee. Accordingly, the learned Judges thought that Arts. 30 and 31 applied to the case. They referred to the decision of the Madras High Court in *Jaldu Venkatasubba Rao v. Asiatic Steam Navigation Co. Ltd.*, 39 Mad. 1 : (AIR 1916 Mad. 314 F.B.), where it was held that a suit for compensation against a carrier for failure to deliver goods entrusted to him was governed by Art. 31 and not Art. 49 or 115, Limitation Act and that was so, whether the action was laid in contract or in tort.

5. Against the above decision, the petitioner moved this Court and obtained the present Rule.

6. Mr. Sen who appeared on behalf of the petitioner contended that Arts.30 and 31 had no application to the case and the proper Article was Art. 145. Towards the close of his argument, he seemed to prefer Art. 49.

7. On behalf of the Railway, it was contended by Mr. Bose that the Court below had rightly applied Arts. 30 and 31. Those Articles speak of suits against a carrier. On my pointing out to Mr. Bose that under the rules relating to deposit of luggage in cloak-rooms, framed under S. 47(1)(f) , Railways Act, the liability of a railway was that of a bailee as under Ss. 152 and 161, Contract Act, he replied that under S. 72, Railways Act, the same was the liability in respect of goods delivered to a railway for carriage. His argument was that there could be no question that Arts. 30 and 31 would apply to a suit for compensation for loss or non-delivery of goods booked with a railway for carriage and if those Articles could apply to such a suit in spite of the railway being a bailee, that character of the liability of the railway could not prevent the Articles being applicable to a suit in respect of loss of goods deposited in a cloak-room.

8. In my opinion, Arts. 30 and 31 are not applicable to a suit of the present character. The Articles stand as follows:

Description of suit.

Period of limitation.

Time from which period begins to run.

30.

Against a carrier for compensation for losing or injuring goods.

One year

When the loss or injury occurs.

31.

Against a carrier for compensation for nondelivery of or delay in delivering goods.

One year

When the goods ought to be delivered.

9. About Art. 31, there can be no question that it applies only to suits in respect of goods committed to a railway for the purpose of carriage. The compensation contemplated is compensation for non-delivery or delay in delivering; and limitation runs from the time when delivery ought to be made. Clearly, the case contemplated is one where the duty of the railway is to carry and deliver and not a case where the duty is merely to keep. The time from which limitation begins to run and the cause of action for the compensation both point to the limited scope of the Article and it applies clearly to the particular case where the railway takes charge of goods for the purpose of carriage and undertakes to carry them safely and to deliver them at the end of the passenger's journey or within a reasonable time. The Article cannot apply to a case where delivery at some destination is not contemplated and is not a part of the undertaking. Article 30 is expressed in more general terms, but even there, the use of the word "carrier" to describe the defendant imports the qualification that he must have that capacity in relation to the goods lost or injured. A carrier, to limit the definition to a carrier of goods which only is relevant under the Articles, is a person who undertakes to transport the goods of another person from one place to another for hire or, it may be, gratuitously. In the latter case, he is not bound to fulfil his promise to carry, but if he does carry, he is liable for any loss that may occur as a result of his or his servants' negligence. But his function must, in any case, be to carry. Article 30 also cannot therefore apply to a case where the person sued is not, in respect of the goods concerned, a carrier.

10. The learned Judges of the Small Cause Court have pointed out that luggage cannot be deposited in the cloak-room of a railway station by any person, but only by a passenger, and they have expressed the view that when accepting luggage for deposit in the cloak-room, the railway does not "cast away its character as carrier." I think, however, that the fact that railway is otherwise a carrier and is so in relation to the owner of the luggage, does not make it a carrier as respects luggage left in a cloak-room, either in fact or in the contemplation of Art. 30. The luggage which a passenger brings to a cloak-room for deposit is, at that time, luggage under his personal control and although the party which provides the convenience of a temporary custody is his carrier, it is not so in relation to the transaction of the deposit. The contract is not a contract of carriage and a passenger who deposits his luggage in the cloakroom of an intermediate station, cannot ask for its delivery to him when he reaches the end

of his journey. That is what the position is in fact. Article 30, again, speaks of a suit against a carrier for losing or injuring goods and clearly contemplates a case where the person sued has lost or injured the goods as and in the capacity of a carrier. It does not cover a case where a person, following the profession of a carrier, accepted certain goods from a passenger for mere custody at a particular place and lost or injured them, not in carrying out a contract of carriage, but through-negligence in the discharge of his duties as a custodian.

11. It need hardly be pointed out that a person, holding a certain professional capacity, cannot be regarded as bearing that capacity in all his dealings. If a railway sells food and refreshments to its passengers in a dining car, it cannot be said that it does so as a carrier, except perhaps when provision of meals is a part of the contract of carriage. A bank, for example, receives deposits of money by way of loans and also accepts deposits of valuables for safe custody, but though in both cases it acts as a bank, the character in which it acts is not the same.

12. The decision of the Madras High Court in the case of *Jaldu Venkatasubba Rao v. Asiatic Steam Navigation Co.*, 39 Mad. 1 : (A.I.R. 1916 Mad. 314 F.B.), relied on by the learned Judges of the Small Cause Court, has no relevancy at all to the point in issue. There, the suit was for the recovery of one of a number of planks of wood delivered to the steamship company for carriage, as also a certain amount for loss of interest. The substantive claim was for recovery of specific moveable property which, it was held, would fail for other reasons; but the Court also held that if the suit could be treated as a suit for compensation for failure to deliver the planks, it would be governed by Art. 31 and not Art. 49 or Art. 115. It is clear that the suit was against a carrier for breach of, or negligence in, performing a contract of carriage and regarded as a suit for compensation, it came directly within the language of Art. 31. That such a suit was held to be governed by Art. 31 can be no authority for saying that the article would equally apply to a suit in respect of goods deposited in a cloak-room and lost.

13. In Halsbury's Laws of England, Hailsham Edition, Vol. I, Art. 1240, p. 756, the following proposition is to be found:

Railway companies receiving passenger's luggage or other chattels in the cloak-rooms of railway stations become responsible to the owners of the chattels deposited as warehousemen only, and not as carriers.

The proposition is founded on two decided cases, *Van Toll v. South Eastern Rly. Co.*, (1862) 12 C.B. (N.S.) 75 : (31 L.J.C.P. 241) and *Pratt v. South Eastern Rly. Co.*, (1897) 1 Q.B. 718 : (66 L.J.Q.B. 418). The second case only contains an observation by Cave J., in the course of the argument that the contract was a common law contract of bailment, but the position of the railway was more fully explained in the first decision. If qua the receiver of luggage or chattels deposited in the cloak-room, a railway is not a carrier, it seems clear that a provision applicable to suits against carriers cannot apply to a suit brought against a railway as such receiver and in order to enforce rights limited to the

transaction of the deposit and in no way connected with any contract of carriage.

14. It is true, as was pointed out by Mr. Bose, that both as regards a contract of carriage and as regards a deposit of goods in a cloak-room, the liability of the railway is that of a bailee, in one case under S. 72, Railways Act, and in the other case under the rules framed under S. 47(1)(f). But in the first case, the provision that the liability will be that of a bailee gives only the nature and extent of the liability, while the character of the railway remains that of a carrier. The railway does not cease to be a carrier which, in relation to a contract of carriage, it in fact is, simply because the measure of its liability is to be taken from the law of bailment. A suit against a railway for compensation for loss or non-delivery of goods consigned for carriage is therefore in fact a suit against a carrier and therefore falls to be governed by Arts. 30 and 31, although the measure of the liability may be that of a bailee. In the second case, that is, the case of a suit in respect of goods deposited in a cloak-room, the defendant railway is not a carrier at all, but in fact a bailee and the provision that its liability is that of a bailee is in accordance with its true character. Such a suit is not a suit against a carrier and therefore Arts. 30 and 31 can have no application.

15. On the facts of the present case, it is not necessary to go further and decide which article of the Limitation Act would really apply. Article 145 was suggested before the trial Judge and Art. 49 before me. If neither of these special articles applies the general Art. 115, dealing with compensation for breaches of contract not otherwise provided for, may have to be considered. But in the present case, the suit, brought within one year and four months of the date of the loss, would be within time, whichever of the articles might be applicable. The suit must therefore be held to be not barred by limitation.

16. It appears from the judgment of the learned trial Judge that the only other plea urged before him in defence related to the quantum of the claim. That plea will now have to be considered and decided. The petitioner, as appears from the statement of his claim, has only asked for the value of the goods alleged to have been lost but no sum by way of damages, although the word "damages" has been used in the body of the plaint. In the absence of any conditions limiting the liability, a person in the position of the petitioner is entitled to the entire value of the goods lost, but he is not, as a rule, entitled to any consequential damages resulting from the loss. The petitioner's claim, therefore, appears to be in accordance with law: *Roche v. Cork, Blackrock and Passage Rly. Co.*, (1889) 24 L.R. Ir. 250 and *Anderson v. North Eastern Rly. Co.*, (1861) 4 L.T. 216 : (9 W.R. 519). But to what extent he can prove his claim will depend upon the evidence in the case.

17. In the result, the rule is made absolute. The judgment and decree complained of are set aside and the case is sent back to the trial Court for hearing on the merits. The petitioner is entitled to the costs of this rule which I assess at two gold mohurs.