
(1954) 09 MAD CK 0020

In the Madras High Court

Case No : Civil Revision Petition No. 485 of 1952

Kishanlal Roopchand and Co.

APPELLANT

Vs

Indian Dominion and Another

RESPONDENT

Date of Decision : 28-09-1954

Acts Referred:

Railways Act, 1890 — Section 140, 77, 80

Citation : AIR 1955 Mad 151 : (1954) 67 LW 1192

Hon'ble Judges : Mack, J

Bench : Single Bench

Advocate : T. Rangaswami Iyengar and T. Krishnaraja Nayakar, for the Appellant; S.S. Ramachandra Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Mack, J.—The petitioner is the plaintiff-firm who sued the B. B. and C. I. Railway as the first defendant, and the M. & S. M. Railway as the

second defendant, to recover Rs. 1541-4-0, being the value of 62 pieces of cloth found missing from one bale of a consignment of fifty bales

despatched to Madras from Ahmedabad on the B. B. and C. I. Railway on 27-11-1947. Notice of claim to compensation u/s 77, Railways Act,

was given only to the M. & S. M. Railway within the six months period prescribed. No notice of claim was admittedly served on the B. B. & C. J.

Railway. It was found that the loss did not take place, on the M. & S. M. Railway.

The suit was dismissed for failure to serve a notice of claim u/s 77 of the Act on the B. B. & C. I. Railway by the learned Chief Judge of the Small

Cause Court on this legal and technical ground. A New Trial application before a learned Bench was dismissed, holding that the dismissal of the

suit was correct.

2. The law applicable is to be found in Sections 77, 80 and 140, Railways Act. u/s 77 a person shall not be entitled to compensation unless a claim

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.

Section 80 provides statutory machinery for compensation for injury in through booked traffic, i.e., where the goods are carried over two or more

railway administrations. It lays down that a suit for compensation may be brought either against the railway administration to which the animals or

goods were delivered by the consignor thereof or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred.

Section 140 lays down the procedure by which a notice u/s 77 or under any other section of the Act may be served on a railway administration,

either by delivery to the Manager or Agent, or by leaving it at his office or by sending it to the Manager or Agent by registered prepaid post:.

3. It is clear from Section 11 read with Section 80 that no railway administration can be made liable for compensation unless a claim for

compensation has been made to it within six months u/s 77 of the Act. There have been divergent views in the High Courts as to how such a claim

should be made and whether for instance a claim addressed to a subordinate official on the railway and not to the Agent or Manager was a

sufficient compliance with Section 17.

In "-- A. Mahadeva Ayyar Vs. The South Indian Railway Co., , there was only one railway involved on which the goods were consigned and.

delivered. In that case a letter was addressed not to the Agent but to the District Traffic Superintendent, Cannanore. A Full Bench of our High

Court took the view that this was not a compliance with Sections 77 and 140 and dismissed the revision petition filed by the consignee against the

dismissal of his suit for compensation with costs. Kumaraswami Sastri J, relaxed greatly the technical rigidity of the statute by emphasising that the

word ""may"" in Section 140 was an enabling provision and did not mean ""must"" and that it would be sufficient if the Agent or Manager had

somehow knowledge of the claim within the specified time of six months, although the claim was addressed to some subordinate of his on the

railway. In that case there was no evidence that the Agent had even notice of this kind within the prescribed period.

4. in -- Duni Chand Ram Saran Das Chopra Vs. Secy. of State and Others, , a Bench of the Calcutta High Court took the view that a notice u/s

77 must be addressed to the railway administration from which compensation is demanded. It clearly laid down that the notice u/s 77 to one

railway administration cannot avail a party for a claim against another railway administration. In that case a claim was sent to the Traffic Manager of

the N. W. Railway on whose line Was Amritsar in which the goods were consigned. A copy was also sent to the Agent of the E. I. Rail way to

whom the goods were entrusted for deli very. Despite this the learned Bench took, with respect, a very technical view and held that the plaintiff's

claim was barred. They however expressed every sympathy with the plaintiff as it had been found that the E. I. Railway were respon sible for the

loss of the plaintiff's goods.

Reliance was placed in that decision on --"E. I. Rly. Co. v. Jethmal Ramanand", 26 Bom 669 (C). That was a case in which a notice u/s 77 was

served only on the B. B. and C. I. Railway, which was the delivering railway, who, however, at once notified the East Indian Railway Company of

the claim, entered into correspondence with it and also gave it notice that in case the plaintiffs sued them they would expect the East Indian Railway

to bear all the expenses, Sir Lawrence Jenkins C. J. who delivered the judgment of the Bench held that though the East Indian Railway Company

had knowledge of the plaintiff's claim, it was not a sufficient compli ance with the provisions of Section 77 read with Section 140, Railways Act.

5. There have Indeed been divergent views taken on the exact relationship between the consignor and the receiving railway and the other railway

systems over which the goods are carried to reach their destination. All the case law on the subject has been reviewed in -- Governor-General of

India in Council Vs. Sukhdeo Ram Marwari and Another, . I find it with respect very difficult to escape from the following summing up of the

position:

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 partnership which may lead to conflicting results. When the legislature has Intervened to make the position absolutely

clear, it is riot safe to appeal to certain doctrines of law of general application.

Mr. Ramachandra Aiyar has strenuously urged on behalf of the Dominion Government now representing the Southern Railways, that in cases like

this the law is perfectly Nilinear. The plaintiff has u/s 80 the option of suing either the contracting railway, i.e., the railway to which the goods were

delivered for carriage, or the railway administration on whose railway the loss, injury, destruction or deterioration occurred. As he points out, the

contracting railway cannot escape liability for such loss, Injury and so on, no matter on which railway it was caused. If, however, the consignee

disregards this obvious remedy and chooses the more difficult alterative u/s 80 of making a claim u/s 77 against the railway administration which

delivers the goods, he takes upon himself the onus of proving that the loss occurred on it.

6. I am unable to take the view, for which I can find no support in a maze of somewhat conflicting case law, that the ""railway administration"" u/s 77

means ""any railway administration"" over which the goods are carried. The generally accepted view and one which would also follow from the

language of Section 77 read with Section 80 Is that each railway administration is treated as a separate entity with a separate existence and a

separate juristic personality. In the present case no notice, or copy of a notice, or, in fact, any communication of any kind was sent by the plaintiff

to the B. B. and C. I. Railway or even to any subordinate thereof. They are the original contracting railway and would in any event, other

requirements being satisfied be liable for the loss, no matter where it occurred.

The only evidence that they even knew anything about this claim is a post card, Ex. P. 5, to the plaintiff from the M. & S. M. Railway that the

matter was under enquiry and asking for the original invoice for a consideration of the plaintiff's claim. This was followed by a letter, Ex. P. 8 dated

17-9-1948 to the effect that ""from enquiries made"" it was found that the sender had executed risk notes A and B, the former of which had a

remark that the binding of two bales was loose and repudiating liability except upon proof that such damage or loss arose from misconduct of the servants of the railway.

The learned advocate for the petitioner urges that it is a reasonable inference from these two communications that the M. & S. M. railway entered into communication with the B. B. & C. I. Railway who must therefore be deemed to have had notice of the plaintiff's claim.

Mr. Ramachandra Aiyar concedes that there is an obligation on the part of the delivering railway when complaints of this kind are made to make enquiries all along the line up to the consigning station, but contends that intimation of a claim made to railway subordinates in this way cannot possibly constitute a notice as required by Section 77 of the Act, which must be preferred by the consignee claiming compensation to the railway administration, which he seeks to make responsible.

7. There is only one decision which gives some support to the plaintiff's case, one by, Basheer Ahmed Sayeed J. sitting by himself in -- Governor-

General in Council Vs. Ajithbhai Jayanthilal and Co. and Others, . In that case the B. B. and C. I. Railway were the consigning railway to whom no

notice u/s 77 of the Act was given within the six months prescribed. Such notice was only sent to the M. & S. M. Railway Company who had to

deliver the goods. This was held to be a compliance of Section 77, it would appear, on the ground that the M. & S. M. Railway company entered

into correspondence with the B. B. and C. I. Railway before the expiry of the period of six months as regards the claim made on them. It is not

apparent from that decision whether notice or that claim even through this Indirect channel ever reached the Agent or Manager of the B. B. and C.

I. Railway. A factor which entered into that decision is contained In the following sentence:

But, in this case, both the railway administrations are part and parcel of the same system. of railways and notice, to the administration who the

plaintiff thought was directly responsible to deliver the goods, should be considered sufficient when that notice had been somewhat brought to the

notice of the other administration from whom the plaintiff seeks to claim relief.

With respect this is a view with which I am unable to agree in view of what appear to be the clear statutory requirements of Sections 77 and 80 of

the Act. It is true that the Dominion of the Government of India now owns these railways but they are nonetheless separate railway ad ministrations

with separate Agents of General Managers. So long as Sections 77, 80 and 140, Railways Act, stand as they are, I do not think it possible to take

the liberal view taken by Basheer Ahmed Sayeed J. in that decision. "I feel bound to follow the other case law on this point which lays down that

before a railway administration can be made liable in a suit for compensation, a necessary statutory requirement is the service of a notice on it by

the claimant.

Mr. Ramachandra Aiyar has urged that Sections 77, 80 and 140 give statutory protection to railway administrations as otherwise papers,

documents and evidence in respect of such claims, unless made to them within a reasonable period in the statutory manner, would not be

preserved and administrations would be faced with innumerable stale and baseless claims. The statutory requirements are after all extremely, simple

and it is in fact surprising that claimants for compensation, despite the clear language of Section 80 and Section 77 and the settled case law on the

point, still persist in rendering notices of claims to compensation to any, but the principal contracting railway who accepts the goods for carriage and

whose liability cannot be questioned even though the loss takes Place on another railway in through traffic. I am most reluctant to stretch the

language of the statute and deviate from settled case law, and with regret must express my inability to agree with Governor-General in Council Vs.

Ajithbhai Jayanthilal and Co. and Others, ". The petition is dismissed with costs.