

(1955) 12 MAD CK 0030
In the Madras High Court

K.V.V. Ardhanari Chettiar and Co., by managing partner K.V.V. Ardhanari Chettiar APPELLANT

Vs

The Union of India (UOI) and Another RESPONDENT

Date of Decision : 15-12-1955

Acts Referred:

Railways Act, 1890 — Section 75(1)

Citation : AIR 1956 Mad 483 : (1957) ILR (Mad) 195 : (1956) 69 LW 375 : (1956) 1 MLJ 6

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Division Bench

Judgement

Krishnaswami Nayudu, J.—This Appeal raises the question as to what is the true meaning of the words "loss, destruction or deterioration of the parcel or package" in Section 75(1) of the Indian Railways Act.

2. The plaintiff is the appellant. He purchased five bundles of raw silk from Messrs. Vishandoss Amarnath of Bombay. The vendors sent the goods by railway parcel on 8th December, 1947, delivering the same at Bombay Victoria Terminus to be booked by railway to Salem Town station for delivery to the plaintiff at Salem Town. Ex. B-2 the parcel way bill given to the consignor by the railway company, was forwarded to the plaintiff who presented the same at the Salem railway station and he was given delivery of only four bundles on 19th December, 1947. He did not receive one bundle of raw silk which was stated to have been despatched along with the other four bundles and the plaintiff claimed a sum of Rs. 3,488-15-0 as the cost price of the said bundle of raw silk. His case in the plaint was that when the consignment arrived at Salem Town, it was found short by one bundle, that one bundle of raw silk which bore No. 177 on the gunny covering was not delivered to the plaintiff and has been lost and that "the said loss was due to the misconduct or gross negligence of the servants of either or both of the three railway systems concerned", namely, the G.I.P., M. & S.M. and S.I. Railways, the first defendant being the Governor-General of India in Council. The suit was for recovery of damages for non-delivery of one bundle of raw silk

and the plaintiffs contend that the defendants are bound in law to make good the loss occasioned, to the plaintiff by the non-delivery of the goods in question.

3. The defence plea is that the bundles were despatched at Bombay by wagon No. BN GG 16344 and when the wagon arrived at Arkonam the seals of the sending station at the wagon were in tact, but that there were only four bundles found at the wagon and so the one bundle should have been lost at the forwarding station itself and that the other bundles reached their destination from Arkonam and were duly delivered. The real defence is that the defendants are not liable for the alleged loss or non-delivery of this one bundle as the consignor has not caused the value and contents of the suit consignment declared at the time of consignment or delivery and he neither paid nor engaged to pay on the value so declared by way of compensation for increased risk as required by Section 75 of the Indian Railways Act as the consigned articles come within the Second Schedule to the Act and are worth more than Rs. 300. They therefore contended that they are not liable for any damages or compensation.

4. Both the Courts below upheld this contention of the railway company and dismissed the action.

5. Section 75(1) is in the following terms:

When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds three hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared in writing or declared them in writing at the time of the delivery of the parcel or package for carriage by railway, and if so required by the administration, paid or engaged to pay in writing a percentage on the value so declared by way of compensation for increased risk.

6. It is common ground that this bundle of raw silk comes within one of the articles mentioned in the Second Schedule and it is of the value of more than Rs. 300. It is also not disputed that there was no assessment of the value and contents ; nor was the declaration that is required to be in writing made and the required" percentage on the value declared paid. Prima facie therefore in view of the goods in question not having been delivered and having been alleged in the plaint to have been lost and the loss also alleged to be due to the misconduct or gross negligence of the servants of the railway companies, Section 75(1) would apply, and in the absence of compliance of the requirements of the section to cover the extra risk, the liability of the railway companies to make good the loss does not arise and the lower Courts must be held to have therefore correctly decided the suit against the plaintiff.

7. But it is now argued that there is no loss, destruction or deterioration, but only a short supply or non-delivery of one bundle, and the non-delivery of one bundle

would not come within the meaning of the words "loss, destruction or deterioration of the parcel or package" and it is for the railway company to establish by evidence that the goods have been lost, when alone they could deny the plaintiff any compensation by invoking Section 75(1) of the Indian Railways Act to their aid. In considering this question, Mr. Ramaswami Ayyangar took me through a number of decisions of the several High Courts which considered the meaning of the words "loss, destruction or deterioration" occurring in the provisions in Chapter VII of the Act relating to the responsibility of railway administration as carriers.

8. Reliance was placed by the trial Court on the decision of our High Court in *The Madras and Southern Mahratta Railway Company Ltd. Vs. Haridoss Banmali Doss*, which was a case u/s 77 of the Indian Railways Act. In that case the goods were delivered not to the consignee, but to a different person and therefore it was a case of misdelivery. Wallis, C.J. and Spencer, J., held, that the suit was barred for want of notice u/s 77 which applies to claims for compensation arising not only from nondelivery or accidental loss or destruction or deterioration of goods but also from wilful delivery to a person not entitled to them. This decision was followed by me in *Ramalingam Chettiar v. Union of India* (1955) 1 M.L.J. 255, where the objection as to want of notice u/s 77 of the Act had to be considered. In that case out of the 450 bags of Bengal gram sent from Harunabad to the plaintiff at Salem Market Station on the South Indian Railway, it was found that the delivery was short by 20 bags and the non-delivery of the 20 bags amounted to the goods having been lost and therefore it came within the meaning of the word "loss" in Section 77 of the Act. I observed in that judgment that the loss may result in any manner but so long as the claimant does not receive the goods as per the railway receipt it must be considered as loss and a notice is required. So long as the goods are not delivered to him, he should consider it as a loss. He will be entitled to commence a proceeding only after the issue of a notice u/s 77.

9. In that decision, I extracted the observations of Wallis, C.J. in *The Madras and Southern Mahratta Railway Company Ltd. Vs. Haridoss Banmali Doss*, out of which extract I would like in particular to refer to the following portion, namely, that

there is really no reason for making a distinction between cases in which goods have been delivered inadvertently to the wrong person and cases, such as the present, in which they were delivered to a person other than the consignee who claimed to be entitled to them but did not produce the railway receipt as he should have done, in support of his claim. We ought not to import distinctions of this sort into the Railways Act unless they rest upon some basis of sound reason which would be likely to have commended itself to the Legislature.

10. The judgment of Horwill, J., in *The Governor-General of India in Council Vs. G. Krishna Shenoy*, was also placed before me, which I sought to distinguish on the facts of that particular case. The view taken by Horwill, J., in that case was

that, if the-railway wished to oppose the suit on the ground that the plaintiff had submitted his claim beyond six months of the date of delivery of the goods for carriage by the Railway, that is, no notice of formal claim has been made within six months from the date of the entrustment of the goods, it was incumbent on them to prove that the goods have been lost or destroyed or deteriorated. He held that since the fate of the goods was specially within the knowledge of the railway authorities and since they adduced no evidence of what had become of them, there was no proof that the goods have been lost. But the learned Judge observed that

Where the fate of the goods is known, and loss had been irretrievably caused to the consignor by delivery to a wrong person, I would have no hesitation, even had I no support from The Madras and Southern Mahratta Railway Company Ltd. Vs. Haridoss Banmali Doss, , in saying that there was a loss to which Section 77 would have applied.

11. Mr. Ramaswami Ayyangar tried to argue that the "loss" in the section would only mean loss to the railway company and for this position referred to certain decisions of other High Courts and in particular to the Full Bench decision of the Allahabad High Court in Governor General in Council and Others Vs. Mahabir Ram and Another, . In that decision it was held that the word "loss" as occurring in Section 77 has not the same meaning as in ordinary parlance, for if it were so, there was no need of putting the words "destruction and deterioration" in juxtaposition with it, that where there is destruction or deterioration of goods, it is not "loss" within the meaning of the word as used in this section, that it does not mean loss to the owner but loss by the railway administration, for if it meant loss to the owner then there was no need for the words "destruction or deterioration" as there is loss to the owner even when there is "destruction or deterioration" and that where non-delivery of goods is due to loss of goods by the railway administration or to their deterioration or destruction then only a notice u/s 77, Railways Act, is necessary, but where non-delivery of goods is due to any other reason, then no such notice is required. The Full Bench dealt with the divergence of opinion on the question whether non-delivery of goods was covered by the word "loss" and pointed out:

According to one school of thought it means loss by the carrier of the articles committed to him or injury to them whilst in his care. It has been held that the word "loss" has been used in the sense of something that happens to the goods as distinct from any loss or injury sustained by the owner. A thing can be said to be lost to the railway administration, when it loses possession of the goods involuntarily or through inadvertence and for the time being is unable to trace them. According to the other school of thought it means loss suffered by the consignor or the true owner, whether such loss occurred by reason of misdelivery or non-delivery, i.e., it includes cases where the goods are not forthcoming.

12. In Dominion of India Vs. Hazari Lal and Another, a Full Bench of the Patna High Court held:

Where the plaintiff's case in the plaint is that the goods have been lost owing to the negligence on the part of the servants of the defendant Railway Company, the case must be treated as one of loss, even though the plaintiff may have framed the suit as for non-delivery. In such a case notice u/s 77 is necessary and no question whether the word "loss" in Section 77 means only actual loss of the goods or includes loss to the plaintiff owing to failure to delivery, arises.

13. In that case, the view taken in the Agent of Agent of the Bengal Nagpur Railway Co. Ltd. Vs. Hamir Mull Chagan Mull and Another, that non-delivery constitutes "loss" within the meaning of Section 77 and therefore the service of notice under that section is essential even in cases of non-delivery was overruled.

14. In Assam Bengal Railway Co., Ltd. v. Radhika Mohan Nath AIR 1923 Cal. 397 it was held that the word "loss" in Section 77 was wide enough to include all cases where the goods are not forthcoming and, therefore, included a case of non-delivery. Similar was the view taken in Srithidhar Mandal Vs. Governor-General in Council, .

15. In Hill Sawyers and Co. v. Secretary of State ILR (1921) Lah. 133 : AIR 1921 Lah. 1 a Full Bench of the Lahore High Court held that the word "loss" in Chapter VII, Railways Act included loss to the owner of the goods made over to a railway administration which had been misdelivered and so had been lost to the person entitled thereto.

16. In E.I.Ry. Railway Co., Calcutta v. Piyara Lal Sohan Lal A.I.R 1928 Lah. 774 it was held that where a Railway Company is sued for compensation for non-delivery of goods and the plaintiff does not admit loss of goods, the railway must first prove loss of goods and on such proof the onus will shift to the plaintiff to prove wilful neglect on the part of the railway or its servants etc., according to the terms of the risk note.

17. A case u/s 75 arose for decision in Governor-General in Council Vs. Lala Debi Sahai, , where it was held by a Bench of the Allahabad High Court that if the plaintiff proves non-delivery it is incumbent upon the defendant to show that the parcel has been lost or destroyed and he must show that everything possible had been done to trace the missing article, that the whereabouts of the article were not known or must adduce some other evidence from which it can be inferred that the parcel had been lost before the Court can hold in his favour that the parcel had been lost.

18. The judgment of a single Judge of the Allahabad High Court in Governor-General in Council Vs. Mohammad Badr-i-alam and Another, was referred to, where it was held that such a meaning should be put on the word "loss" in Section 75 as would be ejusdem generis in its effect with the implication of the words "destruction or deterioration" which follow, that where, for instance, the goods were lying in a godown of railway somewhere on the line or had been deliberately removed or stolen by some employee of the railway, that would not be a case of "loss" by the railway company, that, surely, the railway company

could not be deemed to "lose" what a servant of the company is all the time keeping for his own enjoyment, and that where it was proved that the consignment had reached a midway station but it was not put into the train again to be despatched to the station of destination, it is not a case of a loss in transit within the meaning of Section 75(1) and the consignor is not deprived of his right to claim compensation for non-delivery.

19. That the word "loss" in Section 77 must include loss arising from whatever cause, including a claim on the footing of non-delivery, or negligence, or wrongful detention or conversion on the part of the railway administration was the view taken by a Judge of the Bombay High Court in *Martab Ali Vs. Union of India*,

20. There is no reason why the words "loss, destruction or deterioration" in Section 75 of the Railways Act should be given a different meaning from that given to them in the other sections of Chapter VII of the Railways Act. Goods may deteriorate by any negligence on the part of the company and deterioration may to a certain extent depend upon the nature of the goods. In the case of deterioration of goods, the goods are not lost, but the railway company is not in a position to deliver them in the same condition in which they have received them from the consignor. In the case of destruction, destruction of goods may occur by fire, when the entire goods may disappear or part of them may be burnt by fire and the remaining may be available; or there may be destruction by flood or by other act of God and in such cases the railway company would not be in a position to produce the goods, since they completely or partly disappear by reason of the destruction. In the case of loss, the railway company are not in a position to have control over the goods; that means, the goods are not forthcoming and the railway company are therefore unable to deliver the same. The loss must necessarily occur after the goods are put in charge of the railway company by the consignor delivering them to the railway authorities and it does not matter at what stage the goods are not forthcoming. Loss may occur by theft of the goods, by the goods being misplaced or mislaid by the negligence of the railway servant in not properly verifying the goods that have been loaded or unloaded, and in such cases, goods may disappear; sometimes it may be a case of pilfering away by the railway servant or by members of the public. In any case, the result is that the company are not in a position to produce the goods for delivery to the consignee. It, is however, incumbent on the railway company to place such evidence as is within their power to show at what point of time or at what place the goods have disappeared and if it is shown that a railway servant has pilfered the same and as a result the company are not in a position to have control over the goods, it would also amount to a loss. No distinction can therefore be made of the disappearance of the goods by the goods being stolen by a member of the public or by a railway servant. So long as the goods are not recoverable, it will be a case of loss, as it is a case where the railway company are not in a position to explain as to what had happened to the goods. Some prima facie evidence is therefore necessary to show that the goods have been

lost.

21. The meaning of the word "loss" therefore is that the goods have been lost in the sense that the goods have not been forthcoming. Such a loss is also loss to the person entitled to the goods, that is the consignee. I am therefore unable to agree with respect with the distinction that is sought to be made by the learned Judges of the Allahabad High Court as to the meaning of the word "loss" as occurring in Section 77 and the word "loss" as used in ordinary parlance; nor that the word "loss" as used in the section means not loss to the owner, but loss by the railway administration. "Loss, destruction or deterioration" is in respect of the goods which are lost, destroyed or deteriorated, while in the control of the company causing thereby loss to the owner entitling him to claim compensation. "Loss", therefore, in my view, means lost by the railway administration, since they are not forthcoming and therefore they have no control over the goods, the resultant loss occurring to the owner. It cannot therefore be said that there is no loss to the owner, as the compensation claimed is only for the loss occurring to him and not for any other reason. It is immaterial under what circumstances the goods have disappeared, but so long as the railway administration is not in a position to account for the goods, then it has reasonably to be held that the goods have been lost causing loss to the owner, when a question of compensation would arise if the other requirements of Section 75 are complied with. I am in respectful agreement with the liberal interpretation given by the Calcutta High Court that the word "loss" was wide enough to include all cases where the goods are not forthcoming and, therefore, included a case of non-delivery. But if the Court on the evidence comes to the conclusion that there is any wilful withholding of the goods by the company, then undoubtedly it cannot be said to have been lost by the company. If, however, the withholding or the disappearance of the goods is due to the misconduct of the servants of the railway company, which eventually the administration is not able to trace and recover, then the mere fact that it is the company's servant that is responsible for the disappearance is no ground to say that the goods have not been lost by the company, and it will amount to a loss even in such a case. I am in respectful agreement with the view of Horwill, J., in *The Governor-General of India in Council Vs. G. Krishna Shenoy*, that it is necessary for the railway company to give some proof that the goods have been lost destroyed or deteriorated. But when once they place sufficient material to show that the goods have disappeared at some stage and therefore are not forthcoming it will then be for the plaintiff to establish if it is his case that there is a wilful withholding of the goods and the goods have not been in fact lost but are under the control of the company and the company is able to deliver them.

22. In the present case it is pointed out that the railway company have not adduced any evidence as to the loss of the goods and in the absence of such evidence it cannot be presumed that the goods have been lost. I was inclined to remand the suit to the trial Court to enable the company to place such evidence as is available to show as to how and when this bundle could have disappeared

and the reason for its not forthcoming. But it does not appear to be necessary for the reason that the plaintiff admitted in paragraph 6 of the plaint that the goods have been lost and

the said loss was due to the misconduct or gross negligence of the servants of either or both of the three railway systems concerned.

23. Since the claim for compensation is based on non-delivery and the cause for the non-delivery being admitted to be loss due to the misconduct or negligence of the railway servants there is no purpose in asking the railway company to give any further proof of it. In view of the admission of the plaintiff necessity of proof of the loss becomes dispensed with.

24. I therefore find there is no reason for interfering with the dismissal of the suit by the lower Courts. The second appeal fails and is dismissed. I do not consider that this is a fit case for awarding costs. Each party will bear their respective costs throughout. No leave.