
(1974) 07 AP CK 0010
In the Andhra Pradesh High Court
Case No : Appeal No. 552 of 1970

Lakshmi Bangle Stores

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-07-1974

Acts Referred:

Limitation Act, 1963 — Article 10
Railways Act, 1890 — Section 77B

Citation : AIR 1975 AP 235

Hon'ble Judges : Chinnappa Reddy, J;A.V. Krishna Rao, J

Bench : Division Bench

Advocate : A. Gangadhara Rao and Chundru apparao, for the Appellant; S.P. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Chinnappa Reddy, J.—The plaintiff, a bangle seller of Amadalavalsa purchased glass bangles at Ferozabad under bills Exs. A-9 to A-27 for a sum of Rs. 56,837-04. He booked a wagon for consignment of the bangles from Ferozabad to Srikakulam under RR. No. 434461 and invoice No. 3/3-6-64. The forwarding note was Ex. B-I. On 22-6-1964 there was a collision of trains at Ganguti Station due according to the plaintiff, to the negligence of the railway servants. The wagon carrying the glass bangles was involved in the accident and some of the cases of bangles were broken. Later the bangles were transferred to another wagon by the railway authorities along with other commodities like bags of dhal, etc. The consignment reached Srikakulam on 25-7-1964 and was unloaded on 27-7-1964. The plaintiff took "open assessment delivery" of the consignment. More than half the bangles were damaged. In the Damage Certificate Ex. A-2 issued by the railway authorities the "Hijack" value of the bangles was mentioned as Rupees 56.837-04 and the value of the undamaged stock delivered to plaintiff was shown as Rs. 27,752-87. The plaintiff claimed that he was entitled to get Rs. 27,754-87 being the value of the damaged stock. He also claimed that he was entitled to get the cost of repacking the bundles and half the railway freight.

After issuing notice u/s 80 C. P. C. the suit was filed on 4-9-1867 to recover a sum of Rs. 32,860-87.

2. The railway administration filed a written statement contesting the suit it was claimed that the damage was not due to the negligence of the Railway servants, but was providential. It was pleaded that the value of the entire consignment had been declared by the consignor as Rs. 25,000 in the forwarding note and, therefore, it was not open to the plaintiff to claim that the value of the consignment was Rs. 56,837-04. Since the plaintiff admitted that the value of the undamaged stock delivered to him was Rs. 27,752-87 nothing more was due to the plaintiff. It was also pleaded that the plaintiff not having complied with the provisions of Section 77B of the Indian Railways Act the defendant was protected from liability. It was further pleaded that the damage was due to the defective packing and not due to the negligence of the railway servants. It was finally pleaded that the suit was barred by time. The learned Subordinate Judge held that the suit was not barred by time and that there was no failure to comply with the provisions of Section 77-B of the Indian Railways Act. He held that the damage to the bangles was due to the collision of trains and that the collision was due to the negligence of the railway servants. He held that the actual value of the consignment was Rs. 56,837-04 but that the plaintiff was precluded from claiming any sum by way of value of the damaged stock in view of the fact that he declared the entire value of the stock as Rs. 25,000 which was less than the admitted value of the undamaged stock delivered to him. He relied on the decision of Mack J. in *Ohunilal v. Governor General in Council* (AIR 1949 Mad 754) and the observations of the Patna High Court in *Sorabji Dadabhai Vs. B.N. Ry. Co., Ltd.*,

3. We may straightway say that the learned Subordinate Judge was in error in holding that the plaintiff was estopped from claiming the value of the damaged stock in view of the declaration made by him that the entire value of the consignment was only Rs. 25,000 though the actual value was Rs. 56,837-04. The learned Subordinate Judge himself observed that the plaintiff was under no obligation to mention the value of the consignment in the forwarding note as the value of each of the packages was less than Rs. 500. We may mention here that u/s 77-B of the Indian Railways Act when any articles mentioned in the II Schedule are contained in any parcel or package delivered to a railway administration to be carried by the railway and the value of such articles in the parcel or package exceeds Rs. 500 the railway administration shall not be responsible for the loss, destruction, damage or deterioration of the parcel or package unless the person sending or delivering the parcel or package has declared the value and contents of the parcel or package at the "time of the delivery and has paid a percentage of the value so declared by way of compensation for the increased risk. Section 77-B (2) provides that where such a parcel or package has been lost, destroyed or damaged or has deteriorated the compensation recoverable in respect of such loss, destruction, damage, or deterioration shall not exceed the value so declared. Though it was admitted that

the value of each of the packages in the instant case was less than Rs. 500 it was argued on behalf of the railway administration that since an entire wagon had been booked and the value of all the packages consigned by the wagon was much more than Rs. 500, Section 77-B of the Indian Railways Act was attracted. We do not think we can accept this submission. The fact that the value of the entire, consignment is more than Rs. 500 is of no relevance. What is relevant u/s 77-B is that the value of each of the packages should be more than Rs. 500. In *Governor General in Council v. Sakalchand Batdhutmal* ((1954) 67 Mad LW 807) Krishnaswami Naidu, 3, observed :

"The purpose behind the provisions is apparently that the railway administration must be made known of the value of the contents of a package in order to ascertain about their liability in case of a loss. There may be several packages sent in a single consignment, one of them more valuable than the others. But it is the separate value of the packages as required to be declared and not the value of the entire consignment. Apart from the fact that the word "consignment" is not used and that a declaration is required to be made in respect of the value of each parcel or package, even the reason behind the rule supports the view that what was intended in Section 75 (now Section 77-B) is not the consignment as a whole but the different packages or the items which form the consignment."

The learned Judge also referred to *Firm Mahesh Glass Works Vs. Governor General in Council*, ; *Sorabji Dadabhai Vs. B.N. Ry. Co., Ltd.*, and *Sorabji Dadabhai Vs. B.N. Ry. Co., Ltd.*, We are in entire agreement with the observations of Krishnaswami Naidu J. In the present case, since admittedly the value of each of the packages was less than Rs. 500, Section 77-B was not attracted. In fact, the railway administration also accepted the packages without insisting on the extra payment contemplated u/s 77-B notwithstanding the fact that the entire consignment had been valued at Rs. 25,000. The question, of a person being under a disability from recovering anything more than the value as declared by him arises only in cases where the value of the packages is declared in accordance with the provisions of Section 77-B. Where the consignor is under no obligation to declare the value of the consignment we do not see why, merely because he voluntarily makes a declaration about the value of the goods, he should be precluded from claiming the true value of the goods. It is not as if the railway administration has been induced to act in any particular manner because of the declaration made by the plaintiff, it is not as if the freight charges were collected on the basis of the declared value of the goods. Freight charges were collected on the basis of the weight of the packages. In (AIR 1949 Mad 754), *Mack J.*, did make observations which support the defendants. But we disagree with his view. *Mack J.* had said:

"there appears to have been no legal obligation on the plaintiff to declare in Ex. B-I (forwarding slip) the value of the goods in the box. Nor will such valuation in any way bind the Railway Company who are only liable in any event to pay for

the actual value of the contents of the box which may well be considerably less than the amount declared. An interesting point for determination is whether if plaintiff, though under no legal obligation to value the contents of the box, does so of his own accord, the Railway Company is legally liable to pay him compensation in excess of his own valuation at the time of consignment..... I am of the opinion that where a consignor takes it upon himself specifically to value a box and its contents consigned by rail, it is not open to him to claim from the Railway Company in any excess of that valuation and to contend that the box contained more valuable things, an averment which the Railway Company may have great difficulty in refuting."

The learned Judge did not state the principle on which he was basing his conclusion. If it was his view that the consignor was estopped from claiming more than the value mentioned in the declaration we do not see how there can be any estoppel unless the Railway administration had done something in furtherance of the representation contained in the declaration. The learned Judge referred to the difficulty of the railway administration in refuting a claim about the actual value of the goods. That is only a matter of evidence and proof and we would think that the consignor would be under a greater difficulty in proving that the actual value of the goods was higher than that which he himself had voluntarily declared. We, therefore, hold that the valuation mentioned in the forwarding note does not bind the plaintiff. On the evidence the lower court found that the actual value of the bangles which were booked for carriage was Rupees 56,837-04. The plaintiff produced his bills to substantiate his statement and we also note that these bills were produced before the Railway administration itself at the earliest opportunity. In Ex. A-2. the damage-memo, the "bijack" value of the consignment was noted as Rs. 56,807-04 on the basis of these very bills.

4. On the conclusion arrived at by Us in regard to the binding nature of the voluntary declaration of value made in the forwarding note the plaintiff should succeed in the appeal. However, the respondent's learned counsel raised the question of bar of limitation which we think is a formidable one. In the present case, there is no dispute that the appropriate Article of the Limitation Act which applies to the case is Article 10 (Corresponding to Article 30 of the old Limitation Act), which is as follows:

5. It will be seen that the third column mentions the time from which period begins to run as the time when the loss or injury occurs and not as the time when the loss or injury becomes known to the plaintiff or the time when the injured goods are delivered to the consignee. In the case before us, according to the case of the plaintiff, the injury to the goods occurred on 22-6-1954 when the collision took place. In his evidence as P. W. 1, the plaintiff stated "the entire damage to my glass bangles was caused by the collision between the trains and the careless transshipment of the glass bangles to a new wagon at Ganguti Railway Station." In the notice issued u/s 80, C. P. C. it was stated, "the damage

of the stocks of my clients has occurred due to the sheer negligence and carelessness of the railways in accident dated 22-6-1964 at Ganguti and due to the careless and negligent transshipment of stocks into another wagon." In the same notice the cause of action for the proposed suit was mentioned as 22-6-1964 when the accident occurred and subsequently when the stocks were carelessly transhipped into another wagon. In another notice Ex. B-3 it was mentioned "the cause of such heavy damage to the stocks is only on account of accident". In the plaint also the cause of action was mentioned as 22-6-1964 when the accident occurred and when the transshipment was done at Ganguti. Thus the plaintiff came forward with the express case that the damage to his goods was caused at the time of the collision and again at the time of the transshipment. The collision was on 22-6-1964 and according to the evidence the transshipment was on 1-7-1964. Whether the date of collision or the date of transshipment is taken into account the suit would be barred by time.

6. Sri Gangadhara Rao, learned counsel for the plaintiff argued that since the plaintiff could not be expected to know now and when his goods were damaged, the period of limitation must commence only from the date when the damaged goods were offered to be delivered to the plaintiff and when he thus came to have knowledge of the damage. The learned counsel would be quite right in his submission if the time when damage is caused is unknown to the parties. But where the time when damage was caused is known to the parties it is up to the parties to file a suit within the period of three years from the time when the damage was caused. Once the time of damage comes to be known to the consignor we do not see how he can avoid filing the suit within three years from the time of injury as prescribed by Article 10 of the Limitation Act and claim that he is entitled to file the suit within three years from the date of his knowledge. In the present case, the plaintiff deposed that after taking open delivery he made enquiries and came to know that the damage was due to the collision and to the transshipment. Knowing when the collision and the transshipment had taken place the plaintiff has himself to blame if he did not file the suit within the prescribed period of limitation.

7. The learned counsel relied on the decisions of the Andhra Pradesh High Court in *Oriental Silk Stores, Visakhapatnam Vs. General Manager of S.E. Rly. and Others*, and the Madras High Court in *Union of India Vs. B.L.N. Sitaramiah and Others*, and *M. Sultan Pillai and Sons, a registered partnership firm Vs. The Union of India (UOI) and Others*, . All these cases were cases where the time when the damage was caused was unknown to the parties and the railway administration on whom the burden lay of providing when the damage took place was unable to adduce any evidence on that point. In such a situation it was held that limitation commenced running from the date when the plaintiff came to know of the damage. In other words, the date of knowledge of the plaintiff was considered as "the assumed date" on which the injury to the goods was caused. We may also add here that in the three cases cited to us the question was whether time began to run from the date when the consignee became aware of

the injury to the goods or from the date of repudiation of the claim by the railways. It was decided that time ran from the date of the consignee's knowledge and not from the date of repudiation by the railway.

8. In the case before us, the very case of the plaintiff was that the goods were damaged on the, date of collision and the date of transshipment. The railway administration was thus relieved of the burden of establishing when the damage was caused. The suit was filed beyond the period prescribed by Article 10 of the Limitation Act read with Section 15 of the Limitation Act.

9. In the result, the appeal is dismissed but in the circumstances there will be no order as to costs.