
(1964) 07 GAU CK 0002
In the Gauhati High Court
Case No : First Appeal No. 34 of 1960

Mahendra Nath Chaudhury

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-07-1964

Acts Referred:

Limitation Act, 1963 — Article 30

Citation : (1964) 07 GAU CK 0002

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : D.K. Sarma, for the Appellant; D.N. Medhi, for the Respondent

Judgement

G. Mehrotra, C.J.—This is a Plaintiff's appeal of damages against rising out of a suit for recovery the North-East Frontier Railway, Pandu, on account of the alleged injury caused to the goods sent by him through the Railway.

2. According to the Plaintiff, two consignments tea consisting of 54 chests were booked from Angaigaon to Alipurduar on 5th October 1956 and the October 1956, respectively, in favour of the Plaintiff himself. The allegation of the Plaintiff is that due to the negligence of the Railway and misconduct on the part of the employees of the Railway, all the chests were kept exposed and they got drenched in line water during transit resulting in severe deterioration of the tea contained in the said chests. The Plaintiff by a letter dated 16th October 1956 asked for an open delivery of the goods as he suspected that the contents of the chests must have got damaged as they got wet with rain water. On this, he was replied that necessary instructions were given to the Assistant Inspector, Alipurduar Junction, to grant an open delivery of the said consignments without prejudice provided outward condition of the packages warranted the same. Another letter was sent to the Plaintiff the District Traffic Superintendent, N.F. Railway Alipurduar Junction, on 1st February 1957, telling him that the Assistant Inspector, Alipurduar Junction, informed the District Traffic Superintendent that he went on several days to the Alipurduar Station but the Plaintiff refused to turn up since 17th October 1956 for

taking delivery of the consignments, further request was, however, made to take delivery the consignments on 14th February 1957 when the inspector was to be present to give effect to the delivery. On 20th February 1957 the Plaintiff wrote to the General Manager, North-pur, as follows:

The above consignments got badly wetted with later during transit and thus the contents got badly damaged being all dust tea. As such I applied for assessment delivery to D.T.S./A.P.D J. who was pleased to depute A.C.I. Alipurduar for effecting the delivery and to grant assessment if the condition warrants. The A.C.I. Alipurduar found all the tea of both the consignments badly damaged and deteriorated and unfit for human consumption and granted the assessment delivery on 15th February, 1957

Under this letter he claimed Rs. 6,075/12/- as damages. Thus the assessment delivery was given to him on 15th February 1957.

3. The court below held that the suit was barred by limitation as Article 30 was attracted to the present case. The court below further held that the damage was caused, if at all, to the consignments not because of any negligence on the part of the Railway Administration but because the goods were not des-patched and kept in the god own after they were taken from the tea garden for over a year, and further that the Plaintiff was negligent in not taking the delivery who allowed the goods to remain with the Railway Administration for four months even after the arrival of the goods at Alipurduar Station. On these two findings, the court below has dismissed the suit.

4. Mr. Sarma, the learned Counsel for the Appellant, has very strenuously contended that even if Article 30 of the Limitation Act applies to the facts of the present case, the suit is not barred by limitation. Article 30 of the Limitation Act reads as follows:

Description of Period of Time from which suit. limitation. period begins to run. Article 30. Against One year When the loss or a carrier for Com- injury occurs. pensation for losing or injuring goods.

The starting point of limitation is the date of the injury caused to the goods. No doubt, it has been held by their Lordships of the Supreme Court that the burden is on the Railway Administration to show that the injury was caused to the goods prior to one year from the date of the filing of the suit. Unless the Railway Administration shows that, the suit will not be barred by limitation. Reference may be made to the cases of Union of Union of India (UOI) Vs. Amar Singh, at p. 239, and Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others, . In each case, however, it is a question of fact whether from the evidence it could be said that the burden had been discharged by the Railway or not. In the present case, the Plaintiff made a definite allegation in the plaint that the damage was caused to the goods consigned because all the goods got wet during transit. In his letter dated 16th October 1956, the Plaintiff had asked for an open delivery of the goods because according to him the consignments

somehow got wet with rain water and thus they were badly deteriorated and it was suspected that they were damaged. Thus, according to this letter, whatever damage occurred to the goods must have occurred prior to 18th October 1956. In his notice, which he gave to the Railway authorities, on 20th February 1957, the Plaintiff also stated that the above consignments got badly wet with rain water during transit and thus the contents got badly damaged.

All these assertions by the Plaintiff go to show that the damage must have been caused to the goods sometime during the transit. In his statement also the Plaintiff has stated that the goods when they arrived were kept on the platform and in the verandah unprotected and there were rains at Alipurduar on 15th October 1958, and that also suggests that the goods got damaged when they were left in the verandah and on the open platform uncared for on the 15th October 1956 as there was heavy rain on that-day. The case of the Plaintiff clearly shows that the damage must have been caused prior to 18th October 1958. Mr. Sarma has very strenuously contended that the burden being on the Defendant, the Defendant has failed to prove the exact date of the injury to the goods. The further contends that the case of the Defendant is that there was no rainfall at the Alipurduar Station on the 15th October 1956 and that the goods must have deteriorated either when they were in the Plaintiff's god own for one year prior to dispatch or during the four months when they were in the custody of the Railway. From this statement it cannot be said that the Defendant has proved definitely that the damage was caused to the goods prior to one year from the date of the suit. If the Defendant's case is accepted that the deterioration was due to the fact that the goods were lying for one year in the Plaintiff's god own, obviously the injury must have occurred more than a year before the filing of the suit. If the statement of the Defendant is accepted that the goods got damaged during four months when they were kept with the Railway, that statement has got to be taken along with the Plaintiff's own case, and the Defendant's case that there was no rain on 15th October, 1958, and further that proper care was taken of the goods inasmuch as they were kept in the god own which is roofed and walled by corrugated iron sheets.

From these statements of the Defendant it cannot be said that there was any clear admission by the Defendant that the goods must have been, deteriorated sometimes near about the 15th February 1957 when the actual delivery was taken. Strong reliance is placed on the case of Babulal Dhandhanias Vs. Gauttam and Co., Particular attention has been drawn to the observations at p. 397 wherein their Lordships have held that in the absence of evidence to prove the exact date of injury, the date of the delivery should be taken to be the starting point of limitation. In that case, there was no evidence to show what could have been the date of the injury. In the present case, from all the circumstances, taking the statement of the Plaintiff and the Defendant's evidence it must be held that the damage must have been caused to the goods sometimes prior to 15th February 1957. In effect, the goods must have been damaged prior to 18th October 1958 when the letter was written by the Plaintiff demanding open

delivery. This suit, in our opinion, was rightly to be barred by limitation. It was also found by the Court below that the Plaintiff was negligent in not taking the delivery at once and allowing the goods to remain With the Defendant. It is true that there is no obligation on the part of the Railway to grant open delivery and, at the same time, it cannot be said that the Plaintiff can take advantage of the Railway granting an assessment delivery and take advantage of the deterioration of the goods during that period.

The liability of the Railway is that of a bailer and even if it is held that there was no obligation on the part of the Railway, in the present case the Railway having permitted the Plaintiff to take open delivery on a particular date, they must be held to have taken up the responsibility. But there is the evidence on behalf of the Railway that during that period they took all possible care of the goods and it cannot be said that the Plaintiff has in the first place asserted that the goods were damaged during the period 15th October 1958 and 15th February 1957, and, secondly the Plaintiff has not even succeeded in proving that the Railway did not take proper care of the goods during that period. In this connection reference may be made to the case of Governor-General in Council Vs. Firm Badri Das Gauri Dutt, wherein it was held that the Railway Administration is not bound in law to give open delivery on the demand of a consignee, and hence, any delay in effecting open delivery in pursuance of the wishes of the consignee cannot make the railway administration liable for any loss on account of fall in the market price of the goods.

5. In any view of the matter, the suit, in our opinion, has been rightly dismissed and the appeal must fail costs.

6. The appeal is accordingly dismissed with Appeal dismissed.