

(1968) 02 PAT CK 0012

In the Patna High Court

Case No : A.F.A.D. No's. 464 and 465 of 1963

Mohammad Yusuf

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-02-1968

Acts Referred:

Railways Act, 1890 — Section 55, 56, 72
Tariff Rules — Rule 31(2)

Citation : AIR 1968 Patna 390 : (1968) 1 PLJR 301

Hon'ble Judges : S.G. Misra, J;P.K. Banerji, J

Bench : Division Bench

Advocate : J.C. Sinha, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Allowed

Judgement

Misra, J.—These two appeals arise out of two suits brought by the plaintiff-appellant for compensation for goods not delivered to the plaintiff by the Railway administration. Second Appeal No. 464 of 1963 arises out of Money Suit Nos. 31 of 1960 of the Court of the second Munsif, Bhagalpur. The amount claimed in this suit is a sum of Rs. 1310/-. Second Appeal No. 465 of 1963 arises out of Money Suit No. 29 of 1960 of the same court, and the amount claimed by the plaintiff is Rs. 1095. The plaintiff sent a bundle of artificial silk handloom cloth from Bhagalpur Railway station to Saran Railway station. The consignment in Money Suit No. 31 of 1960 was despatched on the 16th December, 1958, in the consignment in Money Suit No. 29 of 1960 was despatched on the 17th December, 1958. The two consignments reached Saran Railway station on the 19th of December, 1958 and the 20th of December, 1958 respectively. The plaintiff went to take delivery of the goods on the 19th of January, 1959 within a period of one month, but he was informed that the goods were stolen on the night between the 12th and 13th of January, 1959. Hence, the plaintiff brought the present suits after serving necessary notices u/s 77 of the Indian Railways Act and Section 80 of the Code of Civil Procedure.

2. The case of the plaintiff was that the consignments containing artificial silk handloom cloth which was sent by the plaintiff were lost due to misconduct, negligence and carelessness on the part of the Railway employees. As such, the Railway was liable to compensate the plaintiff for the value of the two consignments. Among other pleas, the defendant also urged that there was no misconduct or negligence on the part of the Railway employees and that the plaintiff was not entitled to a decree in respect of the claim in the two suits.

3. The learned Munsif, however, came to the conclusion that the consignments were kept at the Railway station platform and thus there was a clear negligence on the part of the Railway administration. The loss of the goods, in the circumstances, was, therefore, attributable to the act of negligence and the Railway would be bound to compensate the plaintiff for the loss. The other objections of the defendant were also overruled by the learned Munsif. On appeal however, the learned Additional District Judge of Bhagalpur held that since the plaintiff went to take delivery of the consignment on the 19th of January, 1959, about a month after the arrival of the consignment at the destination station, it could not be regarded as reasonable time during which the Railway administration would be liable to take care of the goods as a bailee in terms of rule 31(2) of the Tariff Rules. The mere fact that the plaintiff went to take delivery of the goods almost one month after the goods were received at Saran Railway station would disentitle him from claiming any relief for the loss of the goods. The learned Additional District Judge relied on *Lalji Raja & Sons Firm v. The Governor General of India in Council*, (1950) 54 CWN 902 and *Sarjug Prasad Ishwar Purbey Vs. Union of India (UOI)*, , where "reasonable time" has been interpreted as being twenty-four hours during which the Railway administration is bound to keep in its custody the consignment which arrives at the Railway station of destination. As in terms of Rule 31(2) of the Tariff Rules, reasonable time has been interpreted in the said cases, the duty of the Railway administration to be responsible for the safe keeping of the consignment would not extend beyond this period. When the case was put up before the learned Single Judge, some difficulty was felt as to the proper interpretation to be put on this matter, and, he, accordingly, referred it to a larger Bench. Mr. J. C. Sinha, appearing in support of the appeal, has contended that the two decisions upon which the learned additional District Judge relied are no longer good law in view of the clear pronouncement of their Lordships of the Supreme Court in the *Union of India (UOI) Vs. West Punjab Factories Ltd.*, , where their Lordships have enunciated the extent of the responsibility of the Railway administration for the safe keeping of a consignment after its arrival at the station of destination. Their Lordships have laid down that the responsibility of the railway, which is that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, cannot be curtailed by any departmental rules or standing orders framed by the Railway administration for its own convenience. After referring to certain English decisions and taking into account the difference in the responsibility of the Railway in England as a common carrier and the liability of the Railway

administration in India as only a bailee, their Lordships have enunciated the position as follows:

"The position of law in India is slightly different from that in England, for here the railway is only a bailee in the absence of any special contract and it is only when it is proved that the railway did not take such care of the goods as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality and value as the goods bailed, that the railway's responsibility arises. A warehouseman is also a bailee and, therefore, the railway will continue to be a warehouseman under the bailment, even if its responsibility as a carrier after the lapse of a reasonable time after arrival of goods at the destination comes to an end. But in both cases the responsibility in India is the same, namely, that of a bailee, and negligence has to be proved. In view of the rules to which we have already referred it is clear that the railway's responsibility as a warehouseman continues even if its responsibility as a carrier comes to an end after the lapse of a reasonable time after the arrival of goods at the destination. The responsibility as a warehouseman can only come to end in the manner provided by Sections 55 and 56 of the Railways Act and the Rules which have been framed and to which we have already referred as to the disposal of unclaimed goods."

Before this, their Lordships have explained the point thus;

"If delivery is not taken within this period, the unclaimed goods are sent to the unclaimed goods office where if they are not of dangerous, perishable or offensive character they are retained in the possession of the railway. Thereafter public sales by auction can be held of unclaimed goods which remain with the railway for over six months. This being the position under the rules so far as the application of Sections 55 and 56 is concerned, it follows that even though the responsibility of the railway as a carrier may come to an end within a reasonable time after the goods have reached the destination station, its responsibility as a warehouseman continues and that responsibility is also the same as that of a bailee."

In view of the above pronouncement, it is clear that the decision of the learned Additional District Judge based on the aforesaid two cases cannot be upheld.

4. Mr. Bose, appearing for the respondent has, however, contended that even if the legal position is now altered after the pronouncement of the Supreme Court, so far as the facts of this case are concerned there is no clear finding of negligence on the part of the Railway administration so as to make it liable as a bailee for the loss of the goods. It may be stated that the learned Munsif has clearly found the loss of goods attributable to the negligence on the part of the Railway servants. In this connection, he has mentioned that the goods were kept on the Railway platform. Mr. Bose has urged that he has not referred to any evidence. Accordingly, we looked to the evidence to find out as to whether there was any evidence to this effect. The Booking Clerk of Saron railway station was

examined on behalf of the defendant, who has, however, stated that the consignment, after it was received, was kept at the station. No doubt, he has not clearly stated whether the goods at the platform were in the charge of a member of the Railway Protection Force. There is, however, nothing further on the record one way or the other. If in such circumstances, the learned Munsif inferred that the goods were kept at the Railway platform where there was danger of the same being stolen away, it is difficult to say that the finding of negligence is based on no evidence. Mr. Bose has further contended that the learned Additional District Judge, however, has not made any reference to any act of negligence on the part of the Railway administration. Mr. J. C. Sinha, however, for the appellant, has contended in reply that it was so because the learned Additional District Judge did not set aside the finding of the learned Munsif on any other question except in regard to the period which elapsed between the date when the goods arrived at the Railway station and the date when the plaintiff went to take delivery of the goods. In the circumstances, it must be taken that the other findings of the learned Munsif were approved by the learned Additional District Judge. This argument cannot be regarded as unreasonable in the circumstances of the present case. I am satisfied, therefore, that the appeal must be allowed. The judgment and decree of the learned Additional District Judge are set aside and those of the Munsif are restored. In the circumstances, the parties will bear their own costs of this Court.

Banerji, J.

5. I agree.