
(2013) 10 BOM CK 0033
In the Bombay High Court
Case No : First Appeal No. 1209 of 1996

M/s. Sapna Emporium

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 10 BOM CK 0033

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Sohanraj Chopda, for the Appellant; Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—First Appeal No. 1209 of 1996 is against the Judgment and order dated 22-09-1995 passed in Case No. OC 9300195 passed by the Railway claims Tribunal, Bombay whereby it was held that no valid notice was served u/s 106 of the Railways Act 1989.

Facts stated are:-

On 8th July 1992 a consignment was booked from Bombay central to Delhi. It was a case of non-delivery. The time expired on 07-01-1993. The appellant sent notice dated 25-01-1993. The Claim was filed on 16-07-1993. The notice was objected by the Respondent on the ground that it was sent and served after expiry of six months from the date of the booking, therefore, was not valid within the meaning of section 106 of the Railways Act 1989. Notice u/s 106 of the Act is required to be served upon the appropriate person i.e. Zonal Manager and not General Manager for the Railways Administration within six months from the date of the entrustment of the goods. In the present case it is contended that the notice was sent and served beyond limitation period statutorily prescribed.

2. Mr. Suresh Kumar, learned advocate argued for the respondent with reference to the ruling in Birla Cement Works Vs. G.M., Western Railways, and another, the

claim for refund of excess freight was held barred by Limitation. It was held that section 17(1)(c) of the Limitation Act, 1963 would apply only to a suit or an application made in that behalf in a Civil suit. The Tribunal is creature of the Statute. Therefore is not a Civil Court nor the Limitation Act has application. Thus claim u/s 78-B of the Act was disallowed as the claim was found statutorily barred.

3. While on behalf of the appellant it is argued with reference to the ruling in Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others, . Notice of claim for compensation and refund of overcharge. This ruling is about the liberal construction of the notice. Majority view held that the letter amounts to sufficient notice for the purposes of section 77 of the Railways Act. In another ruling in Governor General in Council Vs. Musaddi Lal, , it was held that section 77 of the Act was enacted to enable the Railway Administration to make inquiries and if possible to recover the goods and deliver them to consignee and to prevent stale claims. In that case the respondent had pleaded that the suit filed by him was not for compensation for loss, destruction, or deterioration of the goods but for "non-delivery of the goods". Therefore in the facts of the case in hand the ruling is not attracted. The provision as to pre-claim notice is as under:-

106. Notice of claim for compensation and refund of over charge.

(1) A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf,-

(a) to the railway administration to which the goods are entrusted for carriage; or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurs, within a period of six months from the date of entrustment of the goods.

(2) Any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned in sub-section (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose, of this section, be deemed. to be a notice of claim for compensation.

(3) A person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice there for has been served by him or on his behalf to the railway administration to which the overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

4. No evidence was led before the Tribunal by the appellant-claimant to establish that any inquiry was made or information was sought by any written

endorsement from railways Administration regarding the alleged non-delivery of the goods, in writing within six months. The contention on behalf of the Appellant that there was duplicate L.R. and Railways authority had made endorsement cannot be accepted at this stage for want of evidence. That being so, no fault is found with the impugned order. The Railway Administration is protected against the time barred/stale claims due to the requirement of the statutorily prescribed pre-claim statutory notice as required u/s 106 of the Railways Act 1989. Hence appeal has no merits. It is dismissed. No order as to costs.