

(1987) 09 PAT CK 0004
In the Patna High Court
Case No : A.F.O.D. No. 192 of 1976 (R)

National Coal Development Corporation Ltd.	APPELLANT
Vs	
Union of India (UOI) and Another	RESPONDENT

Date of Decision : 16-09-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1963 — Article 10, 15(2), 9
Railways Act, 1890 — Section 73

Citation : AIR 1988 Patna 338

Hon'ble Judges : L.P.N. Shahdeo, J

Bench : Single Bench

Advocate : B.P. Sinha and V.M.K. Sinha, for the Appellant; D.K. Sarkar, B.K. Dey and Suresh Prasad, for the Respondent

Final Decision : Dismissed

Judgement

L.P.N. Shahdeo, J.—This appeal is directed against the judgment dated 28th August, 1976, passed by the Second Addl. Subordinate Judge, Dhanbad, in Money Suit No. 137 of 1970. The learned Subordinate Judge has dismissed the suit on contest with cost, against the defendants.

2. The plaintiff. National Coal Development Corporation (for short "the N.C.D.C.") had instituted a suit alleging that it carries on business of producing and winning coal through its various collieries and Sudamdih Colliery under Sudamdih Project, within Jorapokhar P.S., within the district of Dhanbad was one of such units engaged in production of coal. It is claimed that the plaintiff had placed orders with Centrozap Enterprises and in pursuance of the said order, Centrozap Enterprises, through M/s. Kpoex, a Mining Construction Overseas Company had despatched the consignment intended for Sudamdih Colliery to Pathardih Railway Station and the consignment arrived at Khiddirpur Dock, Calcutta and there it was loaded in three wagons covered in wooden ; boxes. That consignment was despatched from Khiddirpur Dock to Pathardih Railway Station for the plaintiffs

Sudamdih Colliery Project. The consignment was being carried by the Eastern Railways under Railway Receipt No. 066908, dt. 26 (16?)-9-67. The aforesaid consignment was also ensured by defendant 2, the Life Insurance Corporation of India, for safe arrival and delivery to the plaintiff at Sudamdih Colliery, via Pathardih Railway Station, under Insurance Policy No. SB/ CDN/3039/3/67 for a sum of Rs. 680.288/-.

3. The aforesaid consignment ultimately reached at Pathardih Railway Station on 20-10-67. The plaintiffs representative along with the Polish experts were present. They found that the consignment was in broken condition and heavy shortage of goods was also detected. In the circumstances, they prayed for open delivery and open delivery was taken. It was found that 451 pieces of bearings, 3 pieces of fire Damp Detectors (SJZ type/3) and two pieces of cover type MOMG Will were short and one box containing machine parts was found empty. Thereafter a short delivery certificate was granted by the Yard Master of Pathardih Railway Station, through Ext. 9, on 20-9-67. Thereafter the plaintiff sent the required notice u/s 78 of the Railways Act and ultimately when the matter was not settled by negotiation with the Railway Administration, the plaintiff issued a notice u/s 80 of the Civil P.C. and instituted the suit.

4. The allegation is that the short delivery of the consignment was due to wilful negligence, misconduct and lack of proper care on the part of the Railway, as a result of which, the plaintiff had to sustain the loss to the extent of rupees one lac.

5. The defendants filed the written statement and contested the suit Their main defence is on the technical aspect and on the law points.

6. It was alleged that the notice u/s 78-B of the Indian Railways Act was not validly served upon the Railway administration. The notice u/s 80 of the Civil P.C. was also illegal and barred by time. It was alleged that the whole claim of the plaintiff was barred by the general and special provisions of the law of limitation, as prescribed u/s 78-B of the Indian Railways Act and the Limitation Act. It was further submitted that the consignment was not booked under Railway risk nor the freight was paid for the same, nor freight was agreed to be paid at the destination and as such the plaintiff is not entitled to claim any relief It is further alleged that the shortage has not properly been stated and items of short certificate does not tally with the plaint.

7. Similar is the defence of the Life Insurance Corporation. It was claimed by it that Khiddirpur Dock is owned and possessed by C.P.C. Railway and that haying not been made a party to the suit, the suit was bad for non-joinder of parties.

8. The further defence is that the shortage, if any, had occurred because of non-compliance of the package condition P/70 and for which they got damaged due to natural course of transit.

9. The Insurance Company has also taken a specific plea that according to the

terms of the Insurance Policy, no notice was served within 10 days of the shortage of the goods or issuance of the short certificate and as such the Insurance Policy, because of the non-compliance of the terms, had ceased to exist

10. The learned trial Court had framed eight issues. The plaintiff had examined 13 witnesses and the defendants had examined two D.Ws. The parties had also relied upon a number of documents. The trial Court on consideration of the evidence, documents and the facts and circumstances of the case held that the plaintiff had failed to prove the shortage and a part of the claim covered under Ext. 17/A was barred by the law of limitation and since the whole claim of the plaintiff was clubbed together, it could not have been bifurcated from that of Ext. 17, therefore, the whole claim based on two Railway receipts, Ext. 17, dt. 16-9-67 and Ext. 17/A dt. 8-9-67, was barred by the law of limitation. On these findings, the trial Court had dismissed the suit on contest

11. Feeling aggrieved, the plaintiff appellant has preferred this appeal.

12. The learned counsel appearing for the plaintiff-appellant has submitted that the findings of the learned trial Court that the claim of the plaintiff was barred by the law of limitation is not correct. According to his submission, the limitation shall run from 20-10-67 and the suit was filed on 16-12-70. The short certificate was issued on 20-10-67, and as such the suit was not barred from the date of the issuance of the short certificate by the Railway Administration. On the other hand, learned counsel appearing for the Eastern Railways and the learned counsel for the Life Insurance Corporation have argued that the whole claim of the plaintiff can be disposed of and decided on the point of limitation itself. According to their submissions, once the limitation starts to run u/s 9 of the Act, both the main limitation and the period of notice will run together, if it is covered within that period.

13. Section 9 of the Limitation Act embodies the principles that once the time for filing suit or application starts running, it will continue to run till it has exhausted the full prescribed period. Sub-section (2) of Section 15 of the Limitation Act deals with the exclusion of period of statutory notices, such as those u/s 80 of the C.P.C. The proper way to look after matters is to take complete two months next after delivery or service of notice. The general period of limitation in this type of suit is 3 years under Article 10 of Limitation Act. In absence of anything otherwise, ordinarily, the date of delivery to the party should be taken as the starting point of limitation.

14. It is an admitted position that in this case, the suit was filed on 16-12-70. The Railway receipt, Ext. 17 is dt. 26-9-67. So three years from 26-9-67 will come to 25-9-70. The notice u/s 80, C.P.C. was served, on 19-8-70, which is admitted. So, from 26-9-67: we have to minus 37 days in two months because both the general limitation and the period of service of notice u/s 80, C.P.C. started to run together. Therefore, the plaintiff can get the benefit of only 23 days u/s 15(2) which if added to 26-9-70 comes to 10-10-70, by which date the

suit should have been filed The suit is, therefore, barred by the law of limitation, as it was filed on 26-12-(70).

15. On the other hand, the argument of the learned counsel for the plaintiff-appellant is that the suit was not barred from the date of the issuance of the short certificate and if two months are added after the three years, i.e. the period of general limitation. In support of that, learned counsel for the appellant has relied upon a ruling reported in Union of India (UOI) Vs. Jogendra Chandra Naha and Others, . In that case, the period of limitation started when the open delivery was given and not From the date of issuance of the short certificate.

16. In this case, the short certificate was issued on 20-10-67, through Ext. 9. Even, this date is taken as the date, for the purpose, the suit appears to be barred under the law of limitation. The short certificate was issued on 20-10-67 and if the period of three years is added, it comes to 19-10-70, by which date the suit ought to have been filed to save the limitation. Notice u/s 80 was served through Ext. 7. It is dt./- 19-8-70. So the two months includes the period from 20-10-67 to 19-10-70, which falls within the period of main run of limitation of the general law of limitation Therefore, the argument that the two months should be added after 19-10-70 to save the limitation is wholly unwarranted in law as required Section 15(2) of the Limitation Act. So, even though his argument is accepted the period of two months is not available, because that period falls within the main run of limitation. Admittedly, the suit was filed on 16-12-70 and as such, even according to his submission, if the date of the short certificate is taken to be the date for computing the period of limitation, it is barred atleast by one month and 15 days. In this view of the matter also, the whole claim of the plaintiff appears to be barred under the law of limitation. In this case, the date of delivery to the party is earlier to the date of issue, of the short certificate. Therefore, in any view, the whole claim of the plaintiff is barred by the law of limitation.

17. The last argument was raised on behalf of the Life Insurance Corporation. The insurance policy is Ext 10 and the premium paid thereon is Ext. 11. According to one of the clauses of the Insurance policy, Ext. 10, there was a condition that a notice with survey report about the quantum of loss should be given within 10 days of the delivery. In this case, the goods were delivered on two dates, i.e. on 30-9-67 and 10-10-67, as appears from Exts/17 and 17/A. The short certificate, Ext. 9 is also dt. 10-10-67. Admittedly, no notice within 10 days of the delivery was served upon the Insurance Company. Therefore, the argument is that because of the breach of that condition, the risk covered by the insurance policy lapsed for want of notice and the insurance policy ceased to operate because of want of the notice as required, under that condition. It is better to illustrate that condition which says" no liability for loss to attach hereto, unless notice of survey has been given to underwriter"s agent, within 10 days of the expiry of the risk". Admittedly, this condition was not fulfilled and, therefore, insurance policy stands terminated and as such the Insurance Company, in view

of the terms of the policy is not liable for the loss which has occurred and for which no notice as required was served on the Insurance Company, as agreed between them.

18. In the result, I find no merit in this appeal, which is accordingly dismissed. In the circumstances of the case, the parties shall bear their own cost. The judgment and decree of the trial Court are hereby, accordingly confirmed.