

(1999) 11 MAD CK 0029
In the Madras High Court
Case No : A.S. No. 512 of 1986

Oriental Insurance Co. Ltd. and another	APPELLANT
Vs	
Union of India and another	RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Contract Act, 1872 — Section 73
Railways Act, 1890 — Section 72, 73, 77, 78B

Citation : (2000) 1 CTC 122 : (2000) 1 LW 134

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : Mr. Nageswaran, for the Appellant; Mr. Gunaseelan, for the Respondent

Judgement

1. The plaintiffs in O.S.No.104 of 1982 on the file of the Sub- Court, Trichy and the defendants therein are the appellants and the respondents

respectively in this appeal. In this judgment the parties to the appeal would hereinafter be referred to as the plaintiffs and the defendants. The

plaintiffs filed the above suit against the defendants for recovering a sum of Rs.49,688.87 with interest at the rate of 9% p.a. on account of the

damage to the goods entrusted by the second plaintiff to the first defendant at Trichy for an onward journey to New Delhi and delivery by the

second defendant. The said suit was dismissed on merits. Hence the present appeal before this Court. Heard Mr.Nageswaran learned counsel

appearing for the plaintiffs/appellants and Mr.Gunaseelan learned counsel appearing for the defendants/respondents.

2. The allegations in the plaint are as follows:

Pursuant to the order placed by the second plaintiff with M/s.Neyveli Ceramics &

Refractories Limited, Vadalur, South Arcot District, a consignment was moved by road from Neyveli to Trichy. There it was entrusted to the first defendant in good order and condition to be carried and delivered to the second plaintiff at New Delhi Railway Station of the second defendant. The consignment was covered by Challan Nos.985 & 986 and by supplier's Invoice No.737. The first defendant accepted such entrustment at Trichy for an onward journey to New Delhi by rail under R.R.No.C223015 dated 20.2.79. The goods were packed in 648 straw covered bundles. Normally it takes three weeks time for transporting the goods from Trichy to New Delhi. However the goods did not reach New Delhi even by 28.3.79. Therefore the second plaintiff lodged a claim for Rs.60,363.15 with the Railways at the second defendant's office pending location of the wagon. Reminders were sent on 3.4.79 and 1.5.79. Original Invoice No.737 and the debit note No.341 issued by the supplier were sent to the second defendant Railway requesting them to settle and pay the claim.

By the middle of June after an inordinate delay on the part of the defendants, the wagon reached New Delhi. Expecting heavy damage the second plaintiff company requested for a joint inspection by their letter dated 16.6.79. On inspection it was found that out of 648 bundles entrusted to the railways, 101 bundles were received in sound condition and the other bundles appear to have been damaged completely. Thereafter the second plaintiff called upon the second defendant to assess the loss and issue a damage certificate. A sum of Rs.2,647.30 was paid towards freight for the entire consignment by the second plaintiff to the second defendant on 23.06.79. A list of the materials found in good condition was made out and delivered to the second plaintiff by the second defendant, the value being Rs.9,973.73. The second plaintiff as owners of the consignment, renewed their claim for settlement of their amount quantified at Rs.50,369.42. A certificate was also issued by the Goods Superintendent of the second defendant on 8.9.79 showing that the contents of 547 bundles were lying in the shed in a broken condition. it is confirmed that the same was a total scrap.

In view of the movement of the goods having been insured with the first plaintiff, the loss was assessed at their instance by the surveyors at

Rs.58,799.09. Based on that report the first plaintiff settled the claim of the second plaintiff by paying to them a sum of Rs.48,727.42, being the proportionate insured value. Thereupon under a duly executed letter of subrogation, a letter of authority and a special power of attorney, the first plaintiff became entitled to recover the said sum from persons, who are responsible for the damage. On behalf of the first plaintiff, initially a claim was made on 19.2.81 on the second defendant for payment of Rs.49,688.87. The second defendant received it but he neither sent any reply nor made any payment. On behalf of both the plaintiffs a notice u/s 80 of the CPC was issued on 30.12.81 to both the defendants. The defendants received that notice on 4.1.82. Neither of them have complied with the notice. Under the provisions of the Railways Act it is the duty of the defendants to care for and to deliver the goods safely to the second plaintiff. The consigned goods have been delivered in a damaged condition and it is due to the act of misfeasance, mal-feasance or non-feasance on the part of the defendants. Therefore they are liable to make good the loss. As the goods were entrusted to the first defendant at Trichy, the court at Trichy has jurisdiction. The owners of the consignment has been joined as the second plaintiff to deviate any plea of non-joinder by the defendants and the plaintiffs have no objection for a decree being passed either in favour of both the plaintiffs or in favour of the first plaintiff.

3. The first defendant filed a written statement and it was adopted by the second defendant. The written statement reveals the following material defences:

It is denied that the plaintiffs have title to the suit consignment and have a right to maintain the suit as well as to recover compensation. This defendant states that enquiries are being made regarding the booking transit and disposal particulars. This defendant craves leave of this court to file an additional written statement as soon as the enquiries are completed. This defendant denies that the plaintiffs are entitled to Rs.49,668.81 or to any other sum. This defendant denies that the plaintiff sustained loss to the extent claimed in the suit. The plaintiffs are put to strict proof of the actual loss suffered by them by producing their account books and other documents. This defendant submits that the plaintiffs are not entitled to any interest as there is no contract, custom or usage to pay interest on the

compensation claimed or even notice charges. This defendant denies the service of any valid notice of claim as required u/s 78B of the Indian Railways Act as well as service of notice u/s 80 of the code of Civil procedure.

4. On the pleadings the learned trial Judge framed the following issues:

- (1) Whether the second plaintiff is the owner of the consignment?
- (2) Whether the claim for interest is tenable?
- (3) What is the extent of loss suffered by the plaintiffs?
- (4) Whether the notice u/s 78B of the Railways Act has been duly given to the defendant?
- (5) Whether the notice u/s 80 of the CPC has been given?
- (6) To what relief?

The following additional issue was framed on 14.12.84:

- (1) Whether the plaintiff is entitled to claim the suit amount from the defendants?

On the side of the plaintiffs two witnesses were examined as P.Ws.1 and 2 and as many as 20 exhibits were marked as Exs.A.1 to A.20. No oral

evidence was let in on the side of the defendants. One exhibit was marked on the side of the defendants as Ex.B.1. The learned trial Judge had

taken up the additional issue first. In the printed judgment a discussion on this issue does not appear to be complete. therefore I perused the

original fair judgment. There also I do not find any continuity and the discussion ends abruptly. The conclusion of the learned trial Judge on this

issue is not disclosed in any part of the judgment. However the mind of the learned trial Judge appears to proceed on the basis that the plaintiffs

have not established that the goods were packed in accordance with the packing rules namely, goods tariff No.36 and therefore they are not

entitled to the damages. Likewise the discussion of the learned trial Judge regarding this also appears to proceed on the basis that the plaintiffs have

not established the actual loss suffered by them. Therefore I can presume safely that on both the grounds referred to above namely, that the goods

have not been established to be packed in accordance with the requirements of goods tariff No.36 and that the plaintiffs have not proved the actual

loss suffered by them, the additional issue went against the plaintiffs. On issue No.3 the learned trial Judge found that the plaintiffs have not

established the extent of loss suffered. Issue No.1 was answered in favour of the plaintiffs by the learned trial Judge holding that there was no dispute with regard to the ownership of the consignment. Since the additional issue went against the plaintiffs, the learned trial Judge held on Issue No.2 that the question of awarding interest does not arise. Issue Nos.4 and 5 were answered in favour of the plaintiffs. As already stated, the correctness of the said judgment is being questioned in this appeal by the plaintiffs.

5. Mr.Nageswaran learned counsel appearing for the plaintiffs submitted that the judgment under challenge suffers from illegality and therefore it

has to be set aside. The learned counsel would further submit that assuming that the goods were not packed in accordance with the packing

conditions as provided for by the Railways, yet that by itself would not absolve the Railways from all liabilities unless they establish that such

defective packing is the cause for damages. The learned counsel would also submit that Ex.B.1 is the Railway receipt in respect of the goods

entrusted to the defendants. The column under the caption ""Risk Rate"" is left blank. Unless this column is filled with the words ""O.R."" namely, the

abbreviated form of ""Owners Risk"", it must be held that the goods were carried at the ""Risk Rate"" of the Railway. He would further submit that

mere noting in Ex.B.1 that packing condition No.17, among other things, has not been complied with, would not enable the Railways to escape

from their liability unless they discharge the burden cast upon them as provided for u/s 77C of the Indian Railways Act as it stood originally. In this

case the defective packing of the goods, assuming it is there, has no nexus to the actual damages suffered. The learned counsel for the plaintiffs

would further contend that there is no question of any salvage at all because except the 101 bundles, the remaining bundles are proved to be a total

loss as evidenced by the copy of the assessment report given by the Railways, which is marked in this case as Ex.A.15. Lastly the learned counsel

for the plaintiffs would contend that the amount claimed in the plaint is the amount representing the value of the damaged goods after giving credit

to the value of the goods delivered in good condition, which again had been worked out on the basis of the price list namely, Ex.A.4 issued by the

supplier. Mr.Gunaseelan learned counsel appearing for the Railways would contend that once it is noticed that the goods entrusted to the Railways

were defectively packed, the railways are completely absolved of all the liabilities for any damage and the entire loss must be borne only by the

plaintiffs. The learned counsel for the defendants/Railways would also contend that the plaintiffs have not proved the actual loss suffered by them

and therefore they are not entitled to any amount at all. Lastly the learned counsel for the Railways would contend that the plaintiffs should have

taken steps to mitigate the loss and thereby reduce the liability of the defendants, if any. Inasmuch as the plaintiffs have not done any such act, they

are not entitled to claim any amount as damages from the Railways.

6. In the light of the arguments advanced by the learned counsel on either side, I perused the pleadings as well as the judgment under challenge and

I am of the opinion that the following issues alone arise for consideration in this appeal:

(a) Whether the plaintiff is guilty of entrusting defectively packed goods to the defendants?

(b) Are the plaintiffs entitled to any compensation as claimed in the plaint, if they are found guilty of having entrusted defectively packed goods to

the Railways at Trichy for an onward journey to New Delhi?

(c) Whether the plaintiffs had proved the actual loss sustained by them and if so, what is the amount to which they are entitled to?

(d) To what other reliefs the plaintiffs are entitled to?

As already noticed the defendants have not let in any oral evidence at all. The entrustment of 648 straw covered bundles containing sanitary Wares

as "earthen wares" to the second defendant at Trichy by the second plaintiff is not disputed and it cannot be disputed. Ex.A.6 dated 23.2.79 is the

Railways receipt issued by the second defendant at Trichy to the second plaintiff. This document is shown to be the consignee's foil. Ex.B.1 is the

Railway receipt/consignor's foil. Both Exs.A.6 and B.1 would establish the entrustment of 648 bundles of sanitary wares to the second defendant.

In Ex.A.6 the second plaintiff's name is mentioned. Ex.A.15 is the copy of the assessment report dated 8.9.79 issued by the Railway Authorities at

New Delhi, Which reads as follows:

The contents shown for assessment are said to be 547 bundles and which contents are lying in the shed in a heap of broken pieces and it is not

possible to count the same. However the same are totally scrap and are not

usable. This has been jointly inspected. This is without prejudice. This is signed by the second plaintiff and two officials have signed on behalf of the second defendant at New Delhi. 101 bundles containing 231 pieces were removed by the party and the balance left for assessment.

The fact remains that the entire 648 bundles of sanitary wares entrusted in: good condition to the first defendant at Trichy have not reached the place of destination intact and out of that lot 547 bundles were found to be in a totally damaged condition.

7. It is no doubt true that in Ex.B.I it is stated that packing condition No.17, had not been complied with. The second plaintiff and the first

defendant are parties to this. Therefore they are bound by what is stated therein. When Ex.B.I contains a noting that packing condition No.17 had

not been complied with, it goes without saying that the goods entrusted by the second plaintiff to the first defendant were defectively packed or

improperly packed. The second plaintiff cannot get away from this fact. in spite of such established fact of defective packing of the goods that were

entrusted by the second plaintiff to the first defendant, could it be said that the Railways are totally absolved of their liability arising out of the

damages to the said consignment. In this context Mr.Nageswaran learned counsel brought to my notice that in Ex.B.I in the second row as against

the column ""Risk Rate"" it is left blank. The learned counsel also elaborated this point stating that if the goods are transported at ""Owners Risk"" ,

then in the above mentioned column the abbreviated form namely, ""O.R."" would be written. If the column relating to ""Risk Rate"" is left blank, it

only means that the Railways carry the goods only at their ""Risk Rate"". The tariff payable on the goods earned at ""Owners Risk Rate"" is lower than

the tariff payable on the goods carried at the ""Railway Risk Rate"". Goods Tariff No.36 part I volume 1 containing the general rules is brought to

my notice by the learned counsel for the plaintiffs. General Rule 177 reads as follows:

177. Risk at which class rates apply:- All class rates apply at Railway Risk except where the symbol ""O.R."" is attached to the class rates for any

commodity in the general classification of goods appearing in Chapter I of Goods Tariff Part 1 (Vol.II) in which cases the class rates apply at

Owners Risk. If such commodities are Offered for booking at Railway Risk, the

freight charges to be levied are 20% higher than the charges leviable at Owners Risk; the latter charges for this purpose are not to be rounded off.

This indicates that all class rates apply at the Railway Risk except where the symbol "O.R." is attached to the class rates. According to me the

absence of the symbol "O.R." in the column meant for "Risk Rate" would clearly indicate that the goods in question were carried by the Railways at

the Railway Risk Rate. In this context Mr.Nageswaran learned counsel brought to my notice Goods Tariff No.35 part I volume 2. It contains

various particulars relating to carriage by railways of various types of goods. At page No.107 as against the Article earthen ware, there is no

indication under the general classification that the goods can be carried at the "Owners Risk" whereas in respect of exs found at page 108 in the

same book it is indicated that they can be carried even at "Owners Risk" and it is so shown under the column general classification. Therefore there

appears to be force in the argument of Mr.Nageswaran that in respect of "earthen ware" there is no scope for the Railways carrying those goods

at the "Owners Risk Rate" as otherwise Goods Tariff No.35 Part I Vol.2 should have provided for such a contingency as well. There is no

evidence in this case that the freight charges paid by the second plaintiff is only for carrying goods at "Owners Risk" and not at the rate when the

goods are carried at the "Railway Risk Rate". To sum up it is clear that the goods were carried at the "Railway Risk Rate" and the goods at the

time of entrustment were defectively packed.

8. On this established position, let me now consider whether the Railways can escape the liability. The general responsibility of the Railway

Administration regarding carriage of goods is set out in Section 73 of the Indian Railways Act, 1890, which alone governs the rights of the parties

in this case. However such liability is subject to exceptions as provided for under sub clauses (a) to (i). Clause (f) relates to any act or omission or

negligence of the consignor or the consignee and Clause (h) deals with latent defects. Assuming for a moment that the entrustment of the goods

defectively packed would amount to an act or omission or negligence on the part of the consignor or the consignee (Clause (f)) or it would amount

to there being latent defects (Clause (h)), yet it cannot be said that the Railway

is totally absolved from all its liabilities. Proviso to Section 73 of the Act establishes this position. The proviso states that whenever such loss or damage is proved to have arisen from any one or more of the aforesaid causes, the Railway Administration shall not be relieved of its responsibility for the loss, damage, etc., etc., unless the Railway Administration further proves that it has used reasonable foresight and care in the carriage of goods, etc., etc., Therefore it is clear that the proviso to Section 73 of the said Act makes it obligatory on the part of the Railway Administration to prove that it had used reasonable foresight and care in the carriage of goods and yet, in spite of that care and foresight, due to causes shown in clauses (a) to (i) the damage had occasioned and then only the Railways can escape the liability. In this case no oral evidence at all was let in by the defendants.

9. The other section which stands attracted to the case on hand is Section 77C of the Act. This section contains four sub-Sections, out of which

sub-Section (4) is not relevant for the purpose of deciding the dispute between the parties in this appeal. Whenever goods are defectively packed

or packed in a manner not in accordance with the general or special orders as a result of which the goods are liable to damage, etc., etc., and the

fact of such defective or improper packing has been recorded by the sender or his agent in the forwarding note, then notwithstanding anything

contained in the foregoing provisions of that chapter (Chapter VII) the Railway Administration shall not be held responsible for such damage, etc.,

etc., when such goods are available for delivery at destination except upon proof of negligence or misconduct on the part of the Railway

Administration or any of its servants. The scope of this section can be summarized as hereunder:

Whenever the sender or his agent by recording the defective or improper packing of the goods in the forwarding note entrust the goods to the

Railway and as a result of which the goods are likely to suffer damage, etc., etc., and if such goods are found to have suffered damage when

available for delivery at the destination, then the sender would not be entitled to any relief against the Railway unless he proves negligence or

misconduct on the part of the Railway Administration. Therefore the burden in these type of cases is on the sender initially. It is clear therefore that

sub-Section (1) of Section 77C of the Act is an exception to Section 73 of the Act, in that the burden of proof under the former section is on the sender while u/s 73 it is on the Railway. The Railway relies upon only Ex.B.1 to contend that the goods were not packed in accordance with the packing conditions. Ex.B.1. is not the forwarding note signed by the sender or by his agent Section 72 of the Act casts a duty on a person, who is delivering the goods to the Railway Administration to be carried by the Railway, to execute a note called the forwarding note in such form as may be prescribed by the Railway Administration in which the sender or his agent shall give such particulars in respect of the animals or the goods delivered or sold as may be retired. Ex.B.1 is not the forwarding note but it is the consignor's foil of the Railway Receipt given by the Railway on the entrustment of the goods to them. The forwarding note always accompanies the entrustment. Therefore section 77C(1) of the Act is not attracted to the case on hand.

10. Section 77C(2) of the Act operates in a different sphere though on common aspect between sub-Section (1) and (2) of section 77C is regarding defective condition, defectively packed or packed in a manner not in accordance with the general or special orders and as a consequence of which the goods are liable to damage, etc., etc., The effect of sub-Section (2) of Section 77C is that when the goods are delivered to the Railway Administration to be carried or found, on the arrival at destination, to have been damaged, etc., etc., then notwithstanding anything contained in the foregoing provisions of this Chapter (Chapter VII) the Railway Administration shall not be held responsible for such damage, etc., etc., on proof by the Railway Administration that (a) the goods were, at the time of delivery to the Railway Administration, were either defectively packed or packed in a manner not in accordance with the general or special orders and the damage to the goods, etc., etc., is a consequence of such defective or improper packing and (b) that such defective or improper packing was not brought to the notice of the Railway Administration.

The forwarding note accompanying the goods in question is not placed before the court. Therefore what the sender disclosed to the Railway Administration at the time of delivering the goods, is not established at all. But however from Ex.B.1 it can be easily noticed that the Railway

Administration was aware about the fact that the goods delivered to it were defectively or improperly packed. That is why in Ex.B.I it is noted that

packing condition No.17 had not been complied with. therefore it is clear that the Railways, though had not let in any oral evidence, yet had

proved the fact that the goods delivered to it at Trichy were defectively or improperly packed.

11. But that itself is not sufficient for the Railways to escape the liability because the further obligation cast upon them under Clause (a) of sub-

Section (2) of Section 77C is that they must also prove that the damage, etc., etc., to the goods found at the time of delivery is a consequence of

such defective or improper packing. I perused the entire materials available on record and there is absolutely no material at all to even infer that the

goods found at the time of delivery had suffered damages, etc., etc., only as a consequence of the defective or improper packing of the same at the

time of entrustment to the Railways at Trichy. Even on facts it may not be possible to accept the argument of the learned counsel for the Railways

that the damage to the goods is a consequence of defective packing only because out of 648 bundles packed in the same manner 101 bundles had

reached the place of destination safely and they had been delivered in good condition in which they were delivered to the Railways at Trichy. The

safe reaching of 101 bundles out of 648 bundles, which were similarly packed, is proof positive to conclude that the defective or improper packing

of the goods have no nexus at all to the actual damages suffered. It may be noticed here that under sub-Section (1) of Section 77C of the Act, the

burden is cast on the owner of the goods to prove negligence on the Railways whereas under sub-Section (2) of Section 77C of the Act, the

burden is on the Railway Administration to prove that the damages to the goods is the consequence of defective or improper packing.

12. In this context Mr.Nageswaran learned counsel appearing for the plaintiffs brought to my notice a judgment of this court in a case reported in

Union of India (UOI) and Another Vs. Khandelwal Bros. (P) Ltd. and Another, wherein a learned Judge of this court after applying his mind to

Section 77C of the Act had held that in order to enable the Railway Administration to escape from its liability the following requirements must be

satisfied by them namely, (a) that the goods were at the time of delivery to the Railway Administration, were in a defective condition or alternatively

the goods were at that time either defectively packed or packed in a manner not in accordance with the general or special orders, if any, issued

under sub-Section (4) and (b) that as a consequence of the defective or improper packing, the goods were liable to damage, etc., etc., The

learned Judge had categorically held that u/s 77C the damage, etc., etc., must be the result or consequence of defective or improper packing. As

already noticed the Railway Administration has not chosen to let in any evidence, either oral or documentary, to prove that the damage to the

goods found with them at the time of delivery to the consignee at New Delhi was the consequence of defective or improper packing. Though oral

evidence let in on behalf of the plaintiffs does not establish the manner in which the goods were packed at the time of delivery to the Railway at

Trichy, yet in view of my discussions referred to above on the impact of sub-Section (2) of Section 77C of the Act, which alone is attracted to the

case on hand, I am of the opinion that the absence of evidence on the side of the plaintiffs as to how and in what manner the goods were packed,

is not going to affect their case on merits. In fact this absence of evidence pales into insignificance in view of the fact that the Railways at the time of

accepting the goods at Trichy for carriage, knew that the goods were defectively packed. Therefore if at all the Railway Administration can escape

from the liability to satisfy the claim of the plaintiffs, then they ought to have proved that the damage, etc., etc., found on the goods at the time of

delivery at New Delhi was only as a consequence of the defective or improper packing, which they had failed to do. Under these circumstances I

have no hesitation to hold that the Railway Administration is responsible for the damages sustained to the goods entrusted to them at Trichy for an

onward journey and delivery at New Delhi.

13. Relying upon a judgment of this court in a case reported in *Union of India v. Saligram Kantilal*, 1978 T.L.N.J.139 the learned counsel for the

Railways contended that in the absence of proof of actual damages suffered, the Railway Administration cannot be made liable u/s 73 of the Act.

The learned counsel also contended that neither the oral evidence of the plaintiffs nor the documentary evidence let in on their side, establishes the

actual damage suffered and therefore they are not entitled to the amount asked for. I have already noticed that there was no oral evidence on the

side of the defendants. ExA.4 is the invoice copy dated 21.2.79 issued by the Neyveli Ceramics & Refractories Limited to the second plaintiff.

The total value of the goods covered under that invoice is Rs.42,997.50. Adding Excise Duty, C.S.T; Insurance Charges; cost of hundi papers;

freight rebate and a further rebate, the total amount of the invoice comes to Rs.59,179.56. P.W.1 had proved Ex.A.4. He is an employee of

Neyveli Ceramics & Refractories Limited. His evidence shows that the price quoted in Ex.A.4 is the price approved by the Government of India

and the price mentioned in it can be taken as the market price on that day. Ex.A.15 is the assessment report dated 8.9.79 given by the Railway

Administration and it discloses that 547 bundles out of 648 bundles are lying in the shed as broken pieces and it is not possible to count the same.

This certificate records that it is a total scrap and it is not usable. Therefore it is clear that 547 bundles out of 648 bundles of sanitary wares are a

total loss to the second plaintiff. Under Ex.A.8 dated 3.4.79 the second plaintiff had lodged a claim with the Railway Administration at New Delhi

for a sum of Rs.60,363.15, being the value of the goods. Ex.A.10 is the reminder from the second plaintiff. Under Ex.A.9 the second plaintiff had

forwarded the original invoice relating to these goods given by the Neyveli Ceramics & Refractories Limited to the Railway Administration at New

Delhi, Again under Ex.A.12 dated 19.6.79 the second plaintiff had written to the Railway Administration at New Delhi stating that the value of the

damaged goods would be Rs.50,000. Ex.A.13 is the letter dated 20.7.79 written by the second plaintiff to the Railway Administration at New

Delhi stating that the value of the goods delivered to them in good condition was Rs.9,993.73. In that letter a sum of Rs.50,369.42 had also been

claimed as the balance amount. A survey was conducted on behalf of the plaintiffs and Ex.A.16 is the surveyor's report. It is not in dispute that the

goods entrusted to the Railway Administration at Trichy in the third week of February 1979 reached New Delhi only in the middle of June 1979.

Ex.A.16 discloses that 547 bundles were found broken into pieces and were not usable at all. Ex.A.1 is the notice issued u/s 80 of the C.P.C. It

contains the details of the broken articles and it's value. This has been done, according to Mr.Nageswaran learned counsel for the plaintiffs, after

taking into account the value of the goods delivered in good condition and the respective invoice value of the same. I do not find any cross

examination worth mentioning in the evidence of P.W.1 to discredit the claim of the plaintiffs regarding the value. Inasmuch as there is total absence of evidence on the side of the defendants on the value of the goods, I am of the opinion that the evidence let in on the side of the plaintiffs, both oral and documentary with regard to the value of the damaged goods, remains uncontradicted. Therefore I have to hold that the plaintiffs have also satisfactory established the loss suffered by them and the contention raised by the learned counsel for the Railways that the plaintiffs have not established the actual loss, is rejected.

14. In view of my foregoing discussions, I am of the opinion that the learned trial Judge had committed an error in dismissing the suit. Accordingly the appeal is allowed with costs throughout. The judgment and decree dated 13.12.84 in O.S.No.104 of 1982 on the file of the Sub-Court, Trichy is set aside and instead there shall be a decree in the suit as prayed for in favour of the plaintiffs.