
(1965) 12 AHC CK 0016
In the Allahabad High Court
Case No : Second Appeal No. 30 of 1958

Prahlad Rai and Sons

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-12-1965

Acts Referred:

Railways Act, 1890 — Section 77, 80

Citation : AIR 1967 All 530

Hon'ble Judges : Lakshmi Prasad, J

Bench : Single Bench

Advocate : H.D. Srivastava and Umesh Chandra, for the Appellant; B.N. Roy, for the Respondent

Final Decision : Dismissed

Judgement

Lakshmi Prasad, J.—This is a plaintiff's second appeal arising out of a suit for the recovery of Rs. 670/12/6 claimed as price of 90 bags of cement plus Rs. 42/12/8 claimed as interest. On 8-6-1954 two consignments of cement bags of 585 bags and 530 bags respectively were booked from Tallayathu Madras, Railway Station on the Southern Railway for being delivered to the consignee at Sonda which is a railway station on the N. E. Railway. These two consignments were delivered to the consignee, viz., the plaintiff-appellant in three installments. The first installment of 495 bags was delivered on 10-6-1954, the second of 285 bags on 22-6-1954 and the third of 245 bags on 2-8-1954. Thus the delivery was short by 90 bags. It is in these circumstances that after serving notices as required by Section 77 of the Indian Railways Act and Section 80 of the CPC the plaintiff-appellant filed this suit against the Union of India through the general Manager, N. E. Railway, Gorakhpur for the amount mentioned above.

2. The main plea on which the claim was contested was that in view of the provisions of section 80 of the Railways Act no liability for short delivery could be fastened on the N. E. Railway since it received only 1025 bags and delivered the same number of bags to the consignee. Both the courts have recorded a finding

on the basis of the very evidence led by the plaintiff-appellant that N. E. Railway received only 1025 bags. On that finding they came to the conclusion that the plaintiff-appellant had failed to prove that the loss occurred on the N, E. Railway Administration and hence having regard to the provisions of section 80 of the Railways Act no decree could be passed in favour of the appellant in the suit which is directed against the Union of India through the General Manager, N. E. Railway only. In that view of the matter the trial court dismissed the suit and the first appellate court has upheld that decree. It is in these circumstance that the plaintiff has come up in second appeal.

3. I have, heard learned counsel for the appellant at some length. His first contention is that in order to escape its liability it was incumbent on the N. E. Railway Administration to prove that it dealt with the consignment with the same care and attention which is required of a bailee and since it failed to lead any such evidence the plaintiff-appellant is entitled to succeed. I am unable to appreciate the argument. Once it is conceded by the plaintiff-appellant himself through his own evidence that the N. E. Railway received only 1025 bags and further that it delivered the same number of bags to the plaintiff-appellant there is obviously an end of the matter Where a bailee delivers the entire goods bailed how can (here arise any question as to whether the bailee dealt with the goods bailed with the required care and attention or otherwise The very fact that he delivered the entire goods bailed is proof positive of the fact that he bestowed the care he was required under the law. I accordingly repeal the contention

4. The other contention is that in so far as the Union of India is the owner of both the railway administrations, i.e. the administration which received the goods at the time of consignment and the administration which received the goods before delivery to the consignee the plaintiff-appellant on proving short delivery is entitled to recover the price to the extent the delivery is short as against the Union of India, the owner of both the railway administrations, notwithstanding the fact that the plaint describes the defendant as Union of India through only one of the two railway administrations. This argument runs counter to the provisions of Section 80 of the Indian Railways Act which clearly provides that in case of loss the railway administration which receives the goods at the time of consignment is liable to compensate the consignee regardless of the fact whether the loss occurred when the goods were in transit on that administration or when the same were in transit on another administration; but the liability of the other administration through which the goods have to pass before being delivered to the consignee arises only if it is proved that, the loss occurred while the goods were in transit on that particular administration.

Learned counsel has referred me to the case of P.R. Narayanaswami Iyer and Others Vs. Union of India, in support of his contention. There are no doubt, certain observations made in that case which go to help the appellant but they are in the nature of obiter. The point that arose for decision in that case was whether the notice given u/s 77 of the Indian Railways Act to one of the various

railway administrations concerned in the transport of the goods was enough to entitle the consignee to maintain a suit for compensation for the loss. That question was raised on behalf of the Union of India on the basis of the provisions of Section 80 of the Railways Act. The Hon"ble Judges decided that Section 80 had nothing to do for the interpretation of Section 77 and Section 77 as it stood did not oblige that the notice required thereunder should be given to each of the various railway administrations. The first appellate Court has referred to the Full Bench case of Chandra Mohan Saha v Union of India AIR 1958 Gau 1953 in support of the view taken by it. To the same effect is the case of Governor General of India in Governor-General of India in Council Vs. Sukhdeo Ram Marwari and Another, . Both these cases fully support the view taken by the first appellate Court. So long as Section 80 of the Indian Railways Act stands, as it is, it is obvious that if the plaintiff makes a choice in the matter of bringing a suit as against a railway administration other than the one which received the goods at the time of consignment, he with eyes open takes upon himself the extra burden of proving that the loss occurred while the goods were in transit on that particular administration.

5. In the circumstances I see no substance in this appeal and dismiss it with costs.