
(1926) 10 PAT CK 0002
In the Patna High Court

Ram Gopal Marwari and Others APPELLANT
Vs
Bengal and North-Western Railway Co. RESPONDENT

Date of Decision : 29-10-1926

Acts Referred:

Railways Act, 1890 — Section 140, 77

Citation : AIR 1927 Patna 241

Hon'ble Judges : Das, J;Adami, J

Bench : Full Bench

Judgement

Adami, J.—The question that arisen in this case is as to the meaning of Section 77 and Section 140 of the Railways Act, Section 77 states that a person shall not be entitled to compensation for loss of goods delivered to the Railway to be carried unless his claim to compensation has been preferred in writing by him or on his behalf to the Railway Administration within six months from the date of the, delivery of the goods by the Railway. Section 140 describes how notices on Railway Administrations are to be served and Clause (c) of the section enables such notice to be served by forwarding it by post in a prepaid letter addressed to the Manager or Agent of the Railway at his office, the letter being registered. The 18th April 1922, was the last day of the six months allowed by the Act starting from the 18th October 1921. The appellant did address a registered letter containing the notice to the Agent of the Railway and it is found that that letter was as a fact received by the Agent on the 20th April 1922. It has also been found that such letter could not have been received by the Agent on the 20th April 1922, unless it as posted from Gorakhpur on or before the 18th April. The finding then is that the letter was posted on the 18th April 1922, that is to say within the six months allowed.

2. The question is whether this posting complies with the terms of Section 77, that is to say whether the posting of the letter containing the notice was a proper service of notice as contemplated by Section 77. The lower appellate Court has found that this was not a compliance with Section 77, and that that section

requires the notice to be received by the Agent within six months. Reading, however, Section 140, Clause (c), it would seem quite plain that fine preferment of the claim has to be made by forwarding the letter by post that is to say by posting a registered letter. It seems clear also that when the letter was posted the claim was preferred as contemplated in Section 77.

3. If the matter be regarded from the opposite point of view we would have to hold that where a person wishes to prefer a claim, residing at some distance from the head office of the Railway Company, the time within which he can prefer a claim must be less than that allowed by the Act, for as in the present case the letter would have to be posted two days before the end of the period of limitation and thus the period of limitation would be shortened. I do not think that it was the intention of the Act that if the claim was made by posting the letter within the time allowed the fact that it was not received by the Agent till after that time expired would bar the institution of a suit. In my opinion the appellant preferred the claim within time and the suit should not have been dismissed by the lower appellate Court on the ground that notice had not been served in time.

4. I would allow the appeal with costs both in this and in the lower appellate Court. The judgment of the learned Munsif will be restored except in regard to the direction for costs against the Bombay Baroda and Central India Railway Company.

Das, J.

I agree.