
(1984) 06 MAD CK 0014
In the Madras High Court
Case No : Second Appeal No. 1686 of 1979

Raman and Co.	Vs	APPELLANT
Union of India and Another		RESPONDENT

Date of Decision : 27-06-1984

Acts Referred:

Contract Act, 1872 — Section 151, 152, 161
Evidence Act, 1872 — Section 101, 102, 103, 104
Railways Act, 1890 — Section 77(1), 77(2)

Citation : AIR 1985 Mad 37 : (1984) 97 LW 320

Hon'ble Judges : Maheswaran, J

Bench : Single Bench

Advocate : V. Sitharanjandas, for the Appellant; P.M. Baskaran, for the Respondent

Judgement

Maheswaran, J.—The plaintiff who has lost in both the Courts is the appellant in this second appeal. On 23-8-1974, the plaintiff, a

partnership firm, booked a consignment of handloom cloth worth Rs. 481.50 through the defendants to be delivered at Naila, and another

consignment of handloom goods on the same day worth Rs. 2437.50 to be delivered at Kesigna. As the goods were not taken delivery of by the

consignee, they were re-booked to Erode at the request of the plaintiff. Open delivery disclosed a shortage in respect of the consignment booked

to Naila of goods worth Rs. 189.25 which claim was settled by the Railways. But, in regard to the consignment to Kesigna open delivery was

applied for on 10-4-1975 and it was granted. It disclosed a shortage of goods worth Rs. 749.50 which was not settled by the defendants

Railways as, in their view, they are entitled to the protection u/s. 77(2) of the Railways Act. This contention of the defendants found favour with the

courts below who dismissed the suit of the plaintiff.

2. At the time of admission of this second appeal, a learned Judge of this Court framed the following substantial question of law for consideration:

Whether the Courts below have properly appreciated and applied the principles u/s. 77(2) of the Railways Act.

It is contended before me that the defendants are liable to pay the value of the goods lost notwithstanding the fact that seven days time from the

date of termination of the transit has expired Sub-secs. (1) and (2) of S. 77 of the Railways Act run thus:

77. (1) A railway administration shall be responsible as a bailee under Ss. 151, 152 and 161 of the Contract Act, 1872 (9 of 1872), for the loss,

destruction, damage, deterioration or non-delivery of goods carried by railway within a period of seven days after the termination of transit:

Provided that where the goods are carried at owner's risk rate, the railway administration shall not be responsible for such loss, destruction,

damage, deterioration or non-delivery, except on proof of negligence, or misconduct on the part of the railway administration or of any of its

servants.

(2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of goods carried

by railway arising after the expiry of the period of seven days after the termination of transit:

A reading of sub-sec. (1) of S. 77 shows that the Railway Administration has to deal with the goods put in its care as a bailee and has to take the

same amount of care for the goods as a man of ordinary prudence not only during the period of transit of goods from the station, of origin to the

station of destination, but for a period of seven days after the termination of the transit. The liability of the Railways is therefore that of a bailee as

defined in the Contract Act and is not that of a common carrier, though they may be common carriers as regards goods which they profess to

carry or actually carry for persons, including live animals and passengers' personal luggage. Sub-sec. (2) 1 of S. 77 shows that the Railway

Administration shall not be responsible for any loss, destruction, deterioration or non-delivery, if it arises after the expiry of seven days after the

termination of the transit. In this case, it is seen from Ex. B-3 the certificate of

shortage; that there was shortage of goods when open delivery was made. D. W. A, who is said to be a clerk in the parcel office has been examined by the defendants-Railways as their only witness. He proved the certificate of shortage. He admitted that in Ex. B-2, the parcel waybill, there is no reference to any defect. He would also admit that if there is any shortage, after the goods arrive, they will make a note in the urgent telegraph message book. He admits that when the goods arrived at Erode, the external appearance of the goods showed that it was intact and therefore he did not weigh the goods and that for the first time they weighed it on 21-4-1975. His categorical admission is that he does not know when the shortage occurred. There is also the further admission by him that they did not weigh the consignment when the plaintiff asked for open delivery. He also stated that the goods might have been lost during transit. Even in re-examination he reiterated that he cannot say when the shortage occurred. This evidence of the only witness examined on behalf of the Railways very clearly shows that the, Railway Administration was not aware as to when the shortage occurred and that it may be even in transit.

3. A reading of S. 77(2) would show that the Railways can claim protection only in a case where loss occurs after the expiry of the period of seven days from the termination of transit. In this case, According to the respondents, the goods arrived on 23-3-1975, which is the date of termination of transit. If the loss occurs seven days after the termination of transit, the Railways can successfully plead protection u/s. 77(2). But, in this case, there is absolutely no evidence as to when the loss occurred. The evidence of D. W. I to which reference was made earlier shows that he was not aware as to when the loss occurred and he also says that the loss may be even during transit. There is no evidence to show that there was no loss of weight during the seven days after transit. The onus is on the Railways to show that no loss, destruction deterioration or damage had taken place not only during the period of transit, but also during the subsequent period of transit, but seven days after the termination of transit. That the Railways having failed to establish, I must hold that the Railway Administration, cannot claim the protection u/s. 77(2) of the Railways Act. It is seen from the plaint allegations that a sum of Rs. 46.31 towards freight and demurrage charges was collected by the Railways. Demurrage charge

is collected by the Railways if the goods are kept with the Railways after the expiry of the free time. The very fact that demurrage was charged

shows that the Railways are also liable to take care of the goods. The Railways can successfully plead in defence the bar of S. 77(2) of the

Railways Act only when the loss takes place after the period of seven days of termination of transit. In the present case, the Railways have failed to

show that the loss did not take place within a period of seven days of the termination of transit. They have also failed to establish that the loss took

place after the period of seven days. The conclusion that the Railway Administration is liable for the loss suffered by the plaintiff, is inescapable.

The Courts below, therefore, were wrong in not decreeing the suit of the plaintiff for a sum of Rs. 795.81 as claimed. The judgments and the

decrees of the Courts below are set aside, the second appeal is allowed and the suit is decreed as prayed for with costs.

4. Appeal allowed.