

(1961) 05 CAL CK 0007
In the Calcutta High Court
Case No : A.F.O.D. No. 53 of 1956

Rameswarlal Sreenarain

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-05-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1908 — Article 31
Railways Act, 1890 — Section 74D, 77

Citation : AIR 1962 Cal 175

Hon'ble Judges : Bhattacharya, J; B.N. Banerjee, J

Bench : Division Bench

Advocate : Bankim Chandra Roy, for the Appellant; Ajoy Kumar Basu, for the Respondent

Judgement

Bhattacharya, J.—The plaintiff-appellant's claim inter alia is for recovery of price for 13 bales of staple fibre yarn out of a consignment of 15 bales, which were not delivered by the railways.

2. The learned Subordinate Judge, while holding that the claim of the plaintiff was not time-barred, came to the conclusion that there was no negligence or misconduct on the part of the railway administration. In the absence of any proof of successive endorsements, two in number, he also found that the plaintiff had no right to sue.

3. On 1st January, 1952, a consignment of 15 bales of staple fibre yarn was booked at Raja Palayam station (Southern Railway) for delivery, under Invoice No. 4, at Shalimar (Howrah; Eastern Railway). The plaintiff obtained delivery of only 2 bales on 28th January, 1952. A short certificate was given on the following day. The goods were booked at owner's risk,

4. Section 74-D of the Indian Railways Act, 1890 is undoubtedly applicable to the facts of the case. It is to the following effect:

"Notwithstanding anything contained in Section 74-C, --

(a) where the whole of a consignment of goods or the whole of any package forming part of a consignment carried at owner's risk rate is not delivered to the consignee and such non-delivery is not proved by the railway administration to have been due to any accident to the train or to fire, or

(b) where, in respect of any consignment of goods or of any package which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of such consignment or package had been pilfered in transit,

the railway administration shall be bound to disclose to the consignor how the consignment or package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor."

5. (After referring to the evidence of some of the defence witnesses His Lordship proceeded :) Accepting the defendant's evidence at its face value, the missing packages were for the first time connected with invoice No. 4 only at Shalimar and on 24-1-52. The details of what happened between 20-1-52 and 24-1-52 are not known precisely. There were two other missing packages, obviously belonging to another consignment, the details of which are not known. Only 2 bales out of the plaintiff's consignment in question were received and one of them bore a cut mark.

6. Obviously there were some lacunae, some gaps, which were sought to be brought out by the plaintiff in course of trial. The learned Subordinate Judge does not appear to have applied his mind to the effect of the alleged non-disclosures. Illustration (g) to Section 114 of the Indian Evidence Act was not also kept in view. The liability of disclosure is no longer merely contractual but is statutory. The plaintiff brought out some of the lacunae, but the learned trial court did not consider the nature or quality of these. Nor did he consider the alleged defects in disclosure as contemplated in Section 74-D. The trend of the cross-examination shows that the plaintiff was not satisfied with the disclosure. Prima facie, therefore, in the circumstances it cannot be said that the principle laid down in AIR 1937 152 (Privy Council) would stand in the way of the plaintiff. The learned Judge should have given an opportunity to the railway administration to file the necessary records, so that all taints of suspicion of laches might be removed. In view of the order that it proposed to be made we direct that the railway be given an opportunity to meet the plaintiffs case in this connection and be allowed by the learned trial court to adduce further documentary evidence and such oral evidence as may be required to connect them with the case or to prove the entries.

7. It has been urged on behalf of the appellant that in the circumstances the learned Judge should have given the plaintiff an opportunity to prove the two endorsements, first in favour of the Central Bank of India and then in favour of the plaintiff. The Railway Receipt in question was produced from the custody of the defendant and was marked on admission. Prima facie it was marked an exhibit as a whole. There might have been a misapprehension in the mind of the plaintiff that the endorsements were not required to be proved. In the interest of justice it is necessary that the plaintiff be allowed to prove formally the endorsements and also to adduce further evidence, if necessary, to prove passing of consideration in respect of both the endorsements.

8. The learned Advocate appearing for the railway has contended that the learned Subordinate Judge was wrong in finding that the suit was not barred by limitation. He has argued inter alia that in the circumstances of the case the date when the goods should have been delivered, within the meaning of Article 31 of the Indian Limitation Act, should be taken to be 28th of January/29th of January, 1952 when 13 bales were not delivered and a short certificate was given and that consequently a suit which was filed on 31st July, 1953, that is, long after one year should be deemed to be barred by limitation. A notice u/s 80 of the CPC was served on the General Manager, Eastern Railway (as well as General Manager, Southern Railway) on 17th September, 1952. Ext. 4(a) dated 31st October/4th November, 1952 is the reply from the Deputy Chief Commercial Superintendent, Eastern Railway, In reply to the notice dated 17-9-52. Paragraphs 2 to 5 are to the following effect:

2. In this connection I have to inform you that the wagon holding the consignment arrived at Santragadhi with one side door in open condition. The consignment being unloaded at Shalimar the shortage in this case was noticed.

3. Preliminary enquiries made by this Department indicate the possibility of the shortage being due to Running Train Theft.

4. Further enquiries into the case are, however, proceeding and the case is also under investigation by the Watch and Ward Department.

5. I shall intimate my final decision for the claim as soon as the reports are received."

Only a possibility of a train theft was hinted at in this letter. Further enquiries were promised in the case which was under investigation by the Watch and Ward Department. Final decision for the claim may relate inter alia to a claim for money, as in paragraph 5, but that does not show conclusively in the circumstances any finality in the matter as contemplated in Jainarain Vs. The Governor-General of India, , Here the railway went on promising enquiries, never denied any liability nor did it make any final statement of its inability to deliver goods. Clearly there was no final repudiation of the plaintiff's claim. In view of the principles laid down in the aforesaid case as well as in R.K. Kanodia Vs. Union of India (UOI), and The Union of India (UOI) and Others Vs. Khemchand and

Others, it cannot be said that the plaintiff's claim is time barred. Mr. Basu has relied on the case decided by my learned brother (Banerjee, J.) and Roy, J. on September 5, 1960, Union of India v. Bhupendra Nath Biswas : vide 65 Cal WN vii (Notes) but the facts of that case are clearly distinguishable. There " ** the promised enquiry related to the claim for compensation made by the plaintiff and there was no assurance by the railway authorities that they would conduct an enquiry about the missing bales", unlike the instant case, The claim of the plaintiff therefore is not time-bared.

9. In the result, the case is remanded to the learned trial court for rehearing, according to law, in the light of the finding and the observations made above, on the existing evidence save in regard to points mentioned above where additional evidence, both oral and documentary, as indicated, may be taken.

10. The appeal is disposed of accordingly. Costs will abide final results.

Banerjee, J.

11. I agree with the order made by my Lord but desire to add a few words, of my own, on the point of limitation.

12. A suit for compensation against a Railway administration for non-delivery of goods is governed by Article 31 of the Limitation Act and has to be brought within one year from when the goods ought to have been delivered. Admittedly, only two bales, out of a consignment of 15 bales, were delivered to the plaintiff on January 28, 1952 and a short certificate in respect of the remaining hales was granted to the plaintiff, by the railway administration, on the following day. The entire consignment having been booked at one and the same time, it is reasonable to assume that the missing bales as well ought to have been delivered on the same date, in the absence of any other circumstances indicating that the missing bales did not become deliverable on the same day. After having received the short certificate, the plaintiff did not feel concerned with enquiries as to how the shortage occurred and straightaway put in its claim for compensation and followed that up with notices u/s 77 of the Indian Railways Act and u/s 80 of the Code of Civil Procedure.

13. On February 13, 1952, the Bengal Nagpur Railway replied to the plaintiff's claim stating that the matter was receiving attention. On October 31, 1952/ November 4. 1952, the Eastern Railway, which was the Railway really concerned; replied to the claim in the following manner:

(Ex. 4(a))"Preliminary enquiries made by this department indicate possibility of the shortage being due to running train theft.

Further enquiries into the case are, however, proceeding and the case is also under investigation by the Watch and Ward Department.

I shall intimate my final decision for the claim as soon as the reports are received".

The aforesaid letter indicated that the railway administration was not sure of the cause of the loss although believing that the loss may have been caused by running train theft. The railway administration, therefore, did not repudiate its liability but put off its decision to a future date. The decision reported in 65 Cal WN vii (Notes) is distinguishable from the present case because in the reported case, the railway administration had no such doubt as in the present case.

14. In the present case, after having written the letter, D/- 31-10-1952/4-11-1952 (Ex. 4 (a)), the railway administration never finally repudiated the claim. The plaintiff waited till July 31, 1953, and then filed the suit. I read the letter Ext. 4(a) to mean that the railway administration was enquiring about the whereabouts of the missing bales and the time when they ought to have been delivered did not arrive. The plaintiff waited for a reasonable time after the aforesaid letter and then filed the suit. On the expiry of such reasonable waiting, the time when the goods ought to have been delivered arrived. The suit is, therefore, not barred by limitation.