
(1964) 04 OHC CK 0014
In the Orissa High Court
Case No : Second Appeal No. 203 of 1963

Ratnakar Sahu

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 22-04-1964

Acts Referred:

Limitation Act, 1908 — Article 31

Citation : AIR 1967 Ori 48

Hon'ble Judges : S. Braman, J

Bench : Single Bench

Advocate : L Srinivas Misra, for the Appellant; B.K. Pal and Bijoy Pal, for the Respondent

Final Decision : Dismissed

Judgement

Barman, J.—Plaintiff is the appellant. This appeal arises out of a suit filed by the plaintiff against the Union of India representing Eastern

Railway and South Eastern Railway for Rs. 4560 as compensation for non-delivery of certain portion of the consignment.

2. The only point in this appeal is limitation. The facts so far as material for the purpose of deciding the point are these: On June 21, 1954 the

plaintiff. hooked ten packages including one old and used iron safe and dismantled parts of machine from Ranaghat on Eastern Railway to

Haridaspur on South Eastern Railway as per railway receipts Ext, 5. On July 13, 1954, 4 packages arrived at Haridaspur. Six packages did not

arrive. It was found that 4 packages were open and some iron scraps were put inside. On September 17, 1954 the plaintiff's brother is said to

have informed the plaintiff that he learnt at the station that only 4 packages had reached the destination on July 13, 1954; that it was not known

when the remaining six packages would arrive; that he found that the articles were lying open; that the goods booked were not inside the packets;

and so he refused to take delivery. Thereafter there was correspondence between the plaintiffs and the Railway authorities. Ultimately on

December 16, 1954 the plaintiff gave the railway notice u/s 77 of Railways Act. On July 21/26, 1955 the railways informed the plaintiff that the

matter was under enquiry. It was not until July 20, 1956 that the plaintiff filed this suit. In defence the railways totally denied the plaintiff's claim,

and also pleaded that the suit was barred by limitation. An issue was also raised before the trial Court whether the suit was barred by limitation.

3. The trial court decreed the suit in favour of the plaintiff for Rs. 4560/-. Before the trial courts the issue of limitation was not pressed by the

defendants. In appeal before the lower appellate court, the defdts. took the point of limitation. On merits the learned lower appellate Court upheld

the decision of the trial court but held that the suit is barred by limitation, and accordingly the plaintiff's suit was dismissed. Hence this second

appeal.

4. In my opinion the suit is clearly barred by limitation under Article 31 of the Limitation Act which provides that for a suit against a carrier for

compensation for non-delievery of, or delay in delivering goods the period of limitation is one year from the time when the goods ought to be

delivered. The reasons are as hereunder discussed.

5. It is clear from the facts stated above that four packages out of 10 packages had arrived on July 13, 1954, and the remaining packages did not

arrive. In any event by September 17, 1954 the plaintiff came to know from the letter written by his brother (Ext. 11) that it was not known when

the remaining six packages would arrive ""Au Sabu Packet keba asiba jana nahi"".

6. The basis of the plaintiff's claim itself was for non-delivery of, or delay in delivering the remaining packages. Paragraph 4 of the plaint is this:

That on 13-7-54 only four packages out of the goods reached the place or destination in an open condition not containing any of the articles of

the consignment booked by the plaintiff and so the plaintiff refused to take delivery of the same and the rest of the articles did not reach the place

of destination at all.

Thus on the pleading itself the plaintiff's claim is based on non-delivery because

the remaining six packages were not eventually delivered. In such a case Article 31 will apply and the period of limitation will run from the date when part of the consignment, namely four packages, was delivered, that is to say July 13, 1954 as aforesaid.

7. The Third Column of Article 31:-

When the goods ought to be delivered"" , contemplates the reasonable time for carriage of the goods. Their Lordships of the Supreme Court in

Bootamal Vs. Union of India (UOI), (Para 12) have clearly laid down that the reasonable time will depend upon the facts of each case. Their

Lordships made it further clear that there is no difficulty in finding out the reasonable time where bulk of the goods have been delivered and a part

has not been delivered, for in such a case in the absence of special circumstances it should be easy to see that the reasonable time is that within

which the bulk of goods have been delivered. In the said decision their Lordships approved of the views of the Calcutta High Court and the Patna

High Court in Union of India (UOI) Vs. Meghraj Agarwalla and Another, and Gajanand Rajgoria and Another Vs. Union of India (UOI), where it

was held that where a part of the consignment has been delivered, that should, in spite of the correspondence regarding enquiries and in the

absence of circumstances leading to the contrary view, be taken to be the date when the goods ought to have been delivered as a whole within the

meaning of those words, in Article 31.

8. In the present case a part of the consignment arrived at the destination on July 13, 1954. In any event by September 17, 1954 by the letter Ext.

11 the plaintiff. was informed that it was not known when the remaining six packets would arrive. The suit having been filed on July 20, 1956 is

clearly barred by limitation.

9. In this view of the case the decision of the learned lower appellate Court is upheld. This appeal is dismissed with costs.