

(1934) 12 AHC CK 0010
In the Allahabad High Court

Secretary of State

APPELLANT

Vs

Messrs Neaz Ali Hamid Ali

RESPONDENT

Date of Decision : 05-12-1934

Acts Referred:

Citation : (1934) 12 AHC CK 0010

Final Decision : Allowed

Judgement

Bennet, J.—This is a civil revision on behalf of the defendant, the Secretary of State, representing East Indian Railway against a decree of a Small Cause Court of Agra, in favour of the plaintiff for Rs. 466 damages. Some points were taken by the learned Government Advocate on behalf of the applicant in revision against details of the decretal amount and he pointed out that Rs. 74 for interest allowed was calculated on the total claim of Rs. 575 and the interest should have been reduced by the Court when the Court held that the amount due to the plaintiff as damages was Rs. 392 and not Rs. 575. These details, however, need not be further considered as it appears to me that the suit is barred on the ground of limitation. The admitted facts are that: "a consignment of 30 bags of rice was sent to the plaintiff from Saharanpur to Agra and arrived on August 3, 1930. A letter is on the file of the Court dated August 5, 1931, from the plaintiff to the defendant alleging that the consignment has been found in badly damaged and deteriorated condition owing to the wilful negligence of the railway servants as has already been personally pointed out."

2. This shows that the damage which forms the subject of the suit was known to the plaintiff on August 5, 1931. That damage is stated to have been caused by water to the consignment of rice. There is no suggestion in the plaint or in the judgment of the lower Court that further damage was caused at any later date. The suit of the plaintiff clearly comes under Article 30, Schedule I, Limitation Act, which is for a suit against a carrier for compensation for losing or injuring goods, period one year from the time when the loss or injury occurs. The loss or injury occurred prior to August 5, 1931, and the suit was not brought until October 15,

1932. Allowing a period of two months for the statutory notice, the suit was 10 days beyond time under Article 30. The lower Court has taken a different date for the start of limitation, that is August 15, 1931. This was the date on which open delivery was given to the plaintiff by the Railway. The lower Court has taken the date of open delivery as the starting point in accordance with three rulings. The first ruling is Jugal Kishore Vs. Great Indian Peninsula Railway and Another, This ruling dealt with Article 31 which is for a suit against a carrier for compensation for non-delivery or delay in delivering goods and the period of one year runs from the date when the goods ought to be delivered. In that ruling there was some correspondence proved between the Railway and the consignee plaintiff and accordingly the Court held that the date when the goods ought to be delivered was indefinite and it extended that date by the time of the correspondence. Similarly in AIR 1927 478 (Oudh) there was another ruling on Article 31. The third ruling is reported in Devi Deen and Sons Vs. Rohilkhand and Kumaun Railway, This ruling is on Article 48. The period of time in that article runs from the date when the person having the right to the possession of the property first learns in whose possession it is.

3. It is clear that a ruling on that Article has no bearing on the present case. The rulings, therefore, quoted by the lower Court cannot be applied to Article 30 where time begins to run from a perfectly definite date, that is, when the loss or injury occurs. Here it is clearly shown by the admission of the plaintiff's letter of August 5, 1931, that the loss had occurred prior to that date. The suit, therefore, was brought beyond the time allowed by Article 30, Limitation Act, and the suit is clearly time-barred. It was represented on behalf of the opposite party that a decree should be given for the amount of Rs. 146-11-9 which the Railway had offered to the plaintiff in full payment of the loss. That offer was not accepted by the plaintiff. The plaintiff chose to bring a suit in the Courts and he brought his suit beyond the time for limitation. No decree can be passed in the suit for any amount as the suit is time-barred. Accordingly I allow this application in revision with costs throughout and I dismiss the suit of the plaintiff.