

(1987) 08 BOM CK 0057

In the Bombay High Court

Case No : Second Appeal No. 53 of 1975

Sharma Goods Transport

APPELLANT

Vs

Vidarbha Weavers Central Co-operative Socy. Ltd.

RESPONDENT

Date of Decision : 24-08-1987

Acts Referred:

Carriers Act, 1865 — Section 10, 3, 5, 6, 7
Contract Act, 1872 — Section 151, 152, 161
Limitation Act, 1963 — Article 30, 31
Railways Act, 1890 — Section 72, 72(1), 77

Citation : AIR 1988 Bom 269 : (1988) 4 BomCR 154 : (1987) MhLj 1002

Hon'ble Judges : M.S. Deshpande, J

Bench : Single Bench

Advocate : M.G. Bhandge, for the Appellant; P.M. Gundawar, for the Respondent

Final Decision : Allowed

Judgement

1. The only question raised in this second appeal is whether it was obligatory on the respondent-original plaintiff to give a notice as required u/s 10 of the Carriers Act, in the event of non-delivery of goods.

2. On 18th August 1969 the respondent entrusted three bales of handloom saris to the appellant at Wardha for carriage and delivery to the respondent at Nagpur. The bales were worth Rs. 5273-35 p. and could have in normal course been delivered to the respondent within three days of the booking.

The goods were never delivered and the respondent, therefore, filed a suit for compensation. The appellant inter alia contended that a notice as required u/s 10 of the Carriers Act, was necessary. Both the Courts below found that the appellant did not deliver the goods to the plaintiff, that the goods were worth Rs. 5273-35 p. and that the trial Court had jurisdiction to try the suit. They negated the contention that a notice u/s 10 of the Carriers Act was necessary.

3. Shri Bhandge for the appellant relied on the provisions of Sections 9 and 10 of

the Carriers Act, which run as follows : --

"9. Plaintiffs, in suits for loss, damages, or non-delivery, not required to prove negligence or Criminal Act. In any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was, owing to the negligence or criminal act of the carrier, his servants, or agents.

10. Notice of loss or injury to be given within six months. No suit shall be instituted against a common carrier for the loss of, or injury to, goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff."

After the goods were entrusted for carriage to the appellant on 18-8-1969 the notice came to be given on 10th Aug., 1970 and both the Courts have concurrently held that this notice was given beyond the period of six months as required u/s 10 of the Carriers Act. The argument here was restricted only to the requirement of giving notice. As submitted by Shri Bhandge, the learned counsel for the appellant, Section 9 only enacts a rule of evidence and bears on the question of burden of proof making it plain that it shall not be necessary for the plaintiff in respect of the goods entrusted to a common carrier for carriage to show that such loss damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants, or agents. The words "non-delivery" which are to be found in Section 9, do not appear in Section 10 which makes a notice mandatory in the event of loss or injury to the goods entrusted to the carrier.

4. The submission on behalf of the respondent was that the cases in which the cause of action arises on account of nondelivery, fall in a class apart from the cases where there is loss of or injury to the goods entrusted to the carrier for carriage, and since reference to non-delivery has been made in Section 9 and deliberately omitted in Section 10, the requirement of giving notice u/s 10 is done away with in the cases where there was non-delivery. This argument ignores the purpose for which Section 9 is enacted, which is to absolve the consignor of establishing negligence or criminal act of the carrier, his servants or agents, once the goods are entrusted for carriage. Section 10 on the other hand has reference to the condition which has to be performed before the suit is brought viz. by giving a notice in order that stale claims may not be preferred after a long lapse of time. What is, therefore, mentioned, in Section 9 can have very little relevance while considering the ambit of Section 10. It is only in Section 9 that the word "non-delivery" occurs. Sections 3, 5, 6, 7 and 8 are the other sections" which refer to the liability for loss or damage caused on account of the conduct of the carrier. u/s 8 notwithstanding anything there in before contained, every common carrier shall be liable to the owner for loss of or damage to any properly delivered to such carrier to be carried where such loss or

damage shall have arisen from the criminal act of the carrier or any of his agents or servants and shall also be liable to the owner for loss or damage to any such property other than property to which the provisions of Section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants. It is in this context that the rule of evidence is formulated in Section 9 absolving the consignor from establishing negligence or criminal act of the carrier, his servants or agents.

5. Reference was made on behalf of the appellant to the analogous provisions of the Railways Act (IX of 1890). Section 72(1) of that Act provides that the responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under Sections 151, 152 and 161 of the Contract Act, 1872. This Sub-section does not refer to non-delivery of goods. u/s 77 of the Railways Act, a person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or 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 animals or goods for carriage by railway. Here also there is no reference to "non-delivery". All the same this Court in *Martab Ali Vs. Union of India*, pointed out that the word "loss" in Section 77 must include loss arising from whatever cause. Thus it includes a claim on the footing of non-delivery, or negligence, or wrongful detention or conversion on the part of the railway administration. This view was approved by the Supreme Court in *Governor General in Council Vs. Musaddi Lal*, where it was observed as follows :

"Section 77 is enacted with a view to enable the railway administration to make enquiries and if possible to recover the goods and to deliver them to the consignee and to prevent stale claims. It imposes a restriction on the enforcement of liability declared by Section 72. The liability declared by Section 72 is for loss destruction or deterioration. Failure to deliver is the consequence of loss or destruction of goods; it does not furnish a cause of action on which a suit may lie against the railway -administration, distinct from a cause of action for loss or destruction. By the use of the expression, "loss, destruction or deterioration", what is contemplated is loss or destruction or deterioration of the goods and the consequent loss to the owner thereof. If because of negligence or inadvertence or even wrongful action the part of the employees of the railway administration, goods entrusted for carriage are lost, destroyed or deteriorated, the railway administration is guilty of failing to take the degree of care which is prescribed by Section 72 of the Railways Act."

6. While meeting the argument the different points of time have been provided under Articles 30 and 31 of the Limitation Act, the Supreme Court observed that

because of the different points of time from which the period of limitation is to run, it is not possible to infer that the claim covered by either article is not for compensation for loss, destruction or deterioration of the goods, and it is not possible to project the provisions of Articles 30 and 31 of the Limitation Act upon Sections 72 and 77 of the Railways Act and to hold that a suit for compensation for loss because of non delivery of goods does not fall within Section 77. The two Courts below, therefore, were not right in treating the cases of non-delivery as falling in a class apart from the cases of loss" of or injury to goods entrusted to the carrier and holding that no notice as required by Section 10 of the Carriers Act need be given in such cases.

7. In the result, the appeal is allowed, The decrees passed by the two Courts below are set aside and the respondent's suit is dismissed. In the circumstances of the case however, there will be no order as to costs throughout.