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**(1926) 07 AHC CK 0031**  
**In the Allahabad High Court**

Sheo Dayal Nirajan Lal

APPELLANT

Vs

Great Indian Peninsula Railway Company

RESPONDENT

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**Date of Decision :** 15-07-1926

**Acts Referred:**

**Citation :** (1926) 07 AHC CK 0031

**Final Decision :** Dismissed

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### Judgement

1. This is an appeal by the plaintiffs in the original suit, who sought the recovery of the value of goods lost, the amount of a certain overcharge alleged to have been paid and damages against the respondent G.I.P. Railway Company.

2. The suit was dismissed by the lower appellate Court on the sole ground that no notice, as required by Section 77 of the Indian Railways Act, was given by the plaintiffs.

3. The facts involved are briefly these:

4. On the 26th of January 1920 the plaintiffs' agent, who was impleaded as the Defendant No. 2, and against whom no relief was claimed, despatched 58 bags of raw sugar, 32 bags of wheat and 11 bags of refined sugar to the plaintiffs in the district of Banda. The consignment was sent from Hapur. Strange though it may sound, it is a fact, that the goods did not reach their destination till the 29th of October 1920. On this date it was discovered that the consignment was short by 17 bags made up of different kinds of the commodity. The plaintiffs gave notice to the railway administration on 13th January 1921 and instituted the suit on the 13th of August 1921. The question is whether the notice was a good one.

5. u/s 77 of the Railways Act a notice has to be given of a claim for compensation for the loss, destruction or deterioration of goods delivered to be carried, within six months from the date of the delivery of the goods for carriage by railway. The date when the goods were delivered for carriage was 26th January 1920. Obviously therefore the notice was given beyond six months from this date. On the face of it, the suit was properly dismissed on the ground of

Section 77 of the Railways Act.

6. In this Court however it has been contended that Section 77 has been wrongly interpreted. Correctly interpreted it is urged it should mean that notice has to be given within six months of the delivery. To read the section in that way would be doing clear violence to the plain language of the rule and we are not prepared to accept this contention.

7. It was then contended that there was no "loss by the railway" and therefore the claim was merely for non-delivery of goods and no notice was required u/s 77. But on the plaint itself the goods were lost, vide paragraph 7 of the plaint. The plaintiffs, there say:

In spite of giving a notice the Defendant No. 1 did not pay the price of the articles which were destroyed (zaya ho gae) on account of its neglect, nor did it refund the freight which it charged unreasonably.

8. Apart from this pleading of the plaintiffs, we are of opinion that the word "loss" in Section 77 of the Indian Railways Act does include a case of non-delivery. We are aware that there is a case in this Court in which a contrary view was taken. But the facts of that case were entirely different. We need not say whether that case was rightly decided or not, but the case before us is clearly different. We refer to the case of Badri Prasad Vs. G.I.P. Railway . that was a case decided by a single Judge of this Court. On the other hand, there is another case, still more recently decided, by another single Judge of this Court, in which it was held that the word "loss" did include non-delivery: see The East Indian Railway Company Vs. Fazal Elahi . There are several cases in the books in which different views have been taken of the meaning of the word "loss" but the majority of the cases do establish that the word "loss" in Section 77 includes "non-delivery" or loss to the plaintiff: see for example Assam Bengal Railway Co., Ltd. v. Radhika Mohan Nath AIR 1923 Cal 397 a case decided by a Bench of two Judges of the Calcutta High Court. In the Patna High Court, there are two cases, each decided by a single Judge, and in them contrary views were taken.

9. In the view taken above the plaintiffs' claim for compensation for loss of goods was rightly dismissed,

10. It has however been contended that, in any case, the amount of overcharge of freight should have been refunded. The learned appellate Judge has found that the overcharge was paid on 29th October 1920, the date of the delivery of the goods to the plaintiffs, in the district of Banda. It seems clear to us that it was physically impossible for the plaintiff to give notice of this overcharge within six months of the date of the delivery of the goods for carriage by railway at Hapur. In the circumstances we are bound to hold, and we do hold, that for the maintenance of the claim for this overcharge a notice u/s 77, Railways Act, was not necessary.

11. The plaintiffs however are confronted with another difficulty, and it is this:

The goods were handed over to the O. and R. Ry. administration at Hapur. The contracting parties were that Railway administration and the plaintiffs. The defendants carried the goods as the agents of the contracting party, the O. and E. Ry. administration. In the circumstances, the principal alone was liable and not the agent. The case is not covered by Section 80, Railways Act. In this view the plaintiffs' suit could not be maintained for the refund of the overcharge against the G.I.P. Railway.

12. The result is that the appeal fails and is hereby dismissed with costs including counsel's fees in this Court on the higher scale.