

(1948) 11 CAL CK 0007
In the Calcutta High Court
Case No : Civil Rule No. 1353 of 1947

Surendra Nath

APPELLANT

Vs

The Governor General in India in Council and Others

RESPONDENT

Date of Decision : 25-11-1948

Acts Referred:

Railways Act, 1890 — Section 140, 77

Citation : AIR 1952 Cal 341

Hon'ble Judges : Amarendra Nath Sen, J

Bench : Single Bench

Advocate : Syama Charan Mitter, for the Appellant; Bhabesh Narayan Bose, for Opposite Party No. 1., for the Respondent

Judgement

Amarendra Nath Sen, J.—This is an application u/s 25, Provincial Small Cause Courts Act. The plff. Surendra Nath Poddar is the applicant & the Governor General in Council & the Manager of the Bengal & Assam Railway are the deft. opp. parties.

2. The plff. sued for the recovery of compensation for non-delivery of one out of a number of bales of cloth which was booked by the plff. at Sealdah Railway station on 31-8-1944 to be delivered to him at Kasiani. The Railway failed to deliver one bale & the plff claimed compensation for that bale. There was a series of letters between the plff. & the Chief Traffic Manager & on the failure of the Rly. to satisfy the plff. the plff. on 16-2-1945 sent a notice claiming compensation to the Chief Transportation Manager, Bengal & Assam Rly., 3 Koilaghata Street. A notice was also sent in accordance with the provisions of Section 80, Civ. P. C.

3. The defence taken by the Rly. Administration inter alia was that the goods had been stolen by some unknown persons & that the Railway was not responsible as none of the Railway servants had misappropriated the goods. There were two other defences taken namely that the notice of the claim to the Chief Transportation Manager was not sufficient to satisfy the provisions of Ss. 77 & 140, Railways Act & that the notice u/s 80, Civ. P.O. was not proper. The learned

Judge held that there was nothing wrong as regards the notice u/s 80, Civ. P. C. but he held that the service of notice on the Chief Transportation Manager of the Bengal & Assam Railway was not sufficient" compliance with the provisions of the Railways Act & that consequently the suit was not maintainable. The correctness of this view is challenged by the plff. in this Rule & it is the only point for determination. The decision of this question will depend on interpretation of Ss. 77 & 140, Railways Act 1890. Section 77 is in the following terms:

"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."

4. It is clear from the section that a person shall not be entitled to compensation for loss, destruction or deterioration of goods delivered to be carried by a railway company unless his claim for compensation has been preferred in writing to the railway administration within six months from the date of the delivery of the goods for carriage by the Railway. The notice was given within six months. The question arises whether the notice has been given to the railway administration. Now, the term "Railway administration" has been defined in Section 3 (6), Railways Act, 1890 & it says that "Railway administration" or "administration" in the case of a Railway administered by the Govt. means the Manager of the Railway & in the case of a Railway administered by a company means the Railway Company. We are concerned here with a Railway administered by the Govt. & therefore it must be held that notice to the railway administration means notice to the Manager of the railway. I next turn to Section 140 of the aforesaid Act which is in the following terms:

"Any notice or other document required or authorised by this Act to be served on a railway administration may be served in the case of a railway administered by the Govt. or a Native State, on the Manager &, in the case of a railway administered by a railway company, on the Agent in India of the Railway company-

(a) by delivering the notice or other document to the Manager or Agent; or

(b) by leaving it at his office; or

(c) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office & registered under Part III, Post Office Act, 1866."

The section says that the notice required by the Act to be served on a railway administration may be served in the case of a railway administered by the Govt. by delivering the notice or other document to the Manager or by leaving it at his office or by forwarding it by post to the Manager at his office. Now, in the present case, no notice was served in any of the methods mentioned above on

the Manager. There was a notice served on the Chief Transportation Manager. The question which first arises for determination is whether the service of the notice on the Manager is compulsory. It was argued but not with much persistence that the use of the word "may" in Section 140, Railways Act, shows that service of notice is not compulsory & reliance is placed on a decision of Lord Williams J. sitting on the Original Side to this effect in the case of "Shamsul Huq v. Secy. of State" 57 Cal. 1286. , I have been through the judgment & find that the learned Judge after expressing his view that the word "may" does not in this section mean "must" says that this point is not really relevant. It is thus clear that the observations of Lord-Williams J. are "obiter". With very great respect to his Lordship I am quite unable to agree with his view. There are innumerable instances in the law reports where the word "may" has been construed as "must". When it is said that a person wishing to make a claim may serve a notice it means that he has the option to serve the notice or not. If he does not serve it his claim will fail. If he wants to succeed he must serve the notice. This view has been expressed in the case of "Nadir Chand v. Wood". 35 Cal. 194 & I am bound by this decision which is of a Bench of this Ct.

5. Next it is argued that the term "Manager" would include the Chief Transportation Manager & that service on the Chief Transportation Manager would amount to service on the Manager. For this view reliance was placed on a decision of a single Judge of this Court in the case of "Sristhidhar v. Governor General in Council" 49 C. W. N. 240. Here again I must respectfully disagree with the view of Henderson J. When one speaks of the Manager of an organization one means he Chief or General Manager & not the Manager of a particular department. The Manager of the railway means the person who is in management of the entire railway. It does not mean the Manager of any particular department. This I consider to be the obvious ordinary meaning of the term "Manager" simpliciter. If the Legislature intended to include other managers of departments they would have said so. Indeed it seems to me that this is the only interpretation possible. The person responsible ultimately is the Chief Manager or General Manager & not the Manager of any particular department. Whatever may be the view of the Manager of a particular department, the General Manager of the Railway may override that view & compromise the claim or allow or resist it. It is therefore necessary that he should be apprised of the claim & it is not sufficient if what I may term a subordinate Manager is so apprised. This is the view held by a Bench of this Ct. in the case of the The Assam Bengal Railway Co., Ltd. Vs. Radhica Mohan Nath . Where it was held that a notice to the traffic manager would not amount to a notice on the Agent or manager. I am bound by this decision with which I respectfully agree. I must hold therefore that there has been no compliance with the mandatory provisions of Ss. 77 & 140, Railways Act.

6. Next it is argued that Section 77, Railways" Act had no application because this was a claim for non-delivery & not a claim for loss. Now, non-delivery may or may not include loss. If a railway administration has the goods & withholds

delivery it would amount to non delivery but it would not amount to loss. But non delivery would also include loss. If there is a loss non-delivery will necessarily follow. The present case is a case of loss. The Railway administration say that the goods were stolen & that they could not deliver them because they were lost by theft. Therefore Section 77, Railways Act, applies to this case. This point was considered in the case of " The Assam Bengal Railway Co., Ltd. Vs. Radhica Mohan Nath & it was held that non-delivery would include loss.

7. Having regard to the views expressed by me above I must uphold the decision of the learned Judge below & discharge this Rule with costs.