
(1998) 07 DEL CK 0058

In the Delhi High Court

Case No : CM (M) 4/98

Thandi Ram Jai Narain

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 28-07-1998

Acts Referred:

Citation : (1998) 5 AD 471 : (1998) 75 DLT 376

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : Mr. M.L. Bhargava, for the Appellant; Mr. Jagjit Singh, for the Respondent

Judgement

S.N. Kapoor, J.—This petition is directed against the rejection of an application for amendment. The appellant filed an application u/s 18 of Railway Claims Tribunal Act praying for amending date of booking from 24th November 1993 to 21st November 1993 in para 5 and in para 7.1 (A) of the application for the same has been mentioned by mistake.

2. The respondent objected to the amendment and submitted that by amending the date of booking from 24th November to 21st November 1993, the applicant wanted to set up a new case which cannot be permitted. In the statutory notice, the applicant had stated that the date of booking was 24th November 1993, Therefore, by bringing the amendment in the claim petition, the cause of action could not be changed.

3. The learned Tribunal accepted the objection and dismissed the application observing as under:

"...the original forwarding note shows the date 21.11.93 but in the notice the applicant has given PWB No. 407318 dt. 24.11.93. Hence by allowing the amendment cause of action will change, since the entire cause of action and the case of the applicant will be entirely different if such amendment is allowed, such amendment cannot be permitted. The affidavit of one Shri Ratan Lal talks about

a Bill from Safi Mohd. with Bill No. 41 dt. 24.11.93 on which the entire case of the applicant revolves. Hence the amendment which will change the cause of action, cannot be allowed in the circumstances."

4. I have heard the parties counsel at length and gone through the file. The claim petition is supposed to disclose how, when and where the cause of action arose. Moreover, without service of statutory notice, no person shall be entitled to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be carried. A claim to the compensation has to be preferred in writing by the claimant or on his behalf to the Railway Administration to which the goods were delivered to be carried or to the Railway Administration on whose railway the destination station lies or the loss, destruction or damage or deterioration occurred.

5. Failure to state correctly the name of the Railway Administration from where the consignment was booked, has been held to be a vital defect. Statutory notice is a condition precedent and it has to be satisfied before filing of the suit. Such a notice forms part of the cause of action. The date of consignment is essentially required to be mentioned in the notice for the very purpose of notice is to enable the Railway Administration to track down the consignment to retrieve it as far as possible in case of damage without incurring further losses. This is necessary to protect the interest of the Railway Administration as well as that of the consignor. This very purpose would be defeated in case it is accepted that the Railway receipt and date of consignment need not be mentioned in the notice. It is a legal obligation of the claimant. Consequently, if in the notice, date of consignment is incorrect, then neither it could be said that the concerned Railway Administration has been given the opportunity to retrieve the concerned consignment to save its own interest and interest of the consignor; nor that the cause of action which arose on different date i.e. 24th November 1993 as incorrectly mentioned in the notice would be relating to the consignment booked on 21st November 1995. And if the notice was given for a different cause of action or a non-existent cause of action and subsequently the plaint is amended for a cause of action arising on different date, then in the absence of the notice, it must be said that there was no cause of action. This would be true in respect of notice either under the Indian Railways Act or u/s 80 CPC. Supposing for the sake of argument the application for amendment is allowed, even then the suit will remain defective from the point of view of lack of proper notice. Thus there is ample justification for rejecting such an amendment.

6. There is yet another reason not to accept the appeal. The application for amendment was moved after lapse of over three years. Consequently, the benefit which had accrued by lapse of time to the respondent could not be taken away by way of amendment. On this account, even fresh notice could not inject life in this case.

7. In such circumstances, there is no reason for this court to interfere with the impugned order. The petition is dismissed accordingly.