

(1923) 11 MAD CK 0063
In the Madras High Court

The South Indian Railway Company

APPELLANT

Vs

S.P.R.S. Narayana Ayyar

RESPONDENT

Date of Decision : 08-11-1923

Acts Referred:

Citation : (1924) 46 MLJ 302

Judgement

1. The findings called for have been received. I will deal first with that relating to the claim u/s 77 of the Railways Act. The finding of the Subordinate Judge is that the notice given by Plaintiff reached the proper officer to whom it should have been sent. The particular notice was, I take it, the letter addressed by plaintiff on 19--8--19 to the District Traffic Superintendent, Trichinopoly (Exhibit D), and replied to by the Deputy Traffic Manager (Freight). It is not quite clear whom the Subordinate Judge considered to be the " proper Officer," but I imagine that he meant by this expression the General Traffic Manager of the Railway. His argument, I understand, is this. Plaintiff's letter to the District Traffic Superintendent was replied to by the General Traffic Manager (as a matter of fact, the reply came from his Deputy); the notice sent by plaintiff to the Agent was referred by the latter to the General Traffic Manager; the consignment receipt indicates that consignors should complain to the General Traffic Manager; therefore, the General Traffic Manager must have been authorized to receive claims u/s 77 and notice to him is a sufficient compliance with Section 140 of the Act.

2. This finding is based on the Full Bench Ruling in Mahadeva Aiyar v. S. I. Ry. Co., 43 MLJ 202 (FB). As 1 read that ruling, what two of the three Judges, decided was this, that there should be evidence (1) either that the power of the Agent to receive notices u/s 140 had been delegated to some subordinate officer, who had actually received the notice or (2) that the company by its rules or course of business had held out to the public that notices might be given to such an officer instead of to the agent and thus estopped itself from raising a technical defence.

3. In this case, I. can find no such evidence. The rules of the company have not been produced and there is nothing to show that the Agent has delegated to any of his subordinates his power u/s 140. Nor is there any evidence from which it can be inferred that plaintiff's first claim came to his notice. The circumstances referred to by the Subordinate Judge do not justify the conclusion that the company's course of business has led the public to believe that notice may be given to the District Traffic Superintendent, the Deputy Traffic Manager or the General Traffic Manager instead of to the Agent. Even plaintiff, when he came to issue his formal notice, addressed it to the Agent, when, unfortunately for himself, it was out of time. He cannot, I think, fall back on informal correspondence between himself and subordinate officers of the Railway at an earlier date.

4. I think that the Subordinate Judge's finding that plaintiff's letter to the District Traffic Superintendent of 19th August 1919 was a proper notice is supported by no evidence. Nothing has been proved that would bring the case within the Full Bench ruling referred to above. It is not necessary to consider the other findings. The suit is barred. The Revision Petition is allowed with costs Throughout.