

(1975) 07 GAU CK 0002
In the Gauhati High Court
Case No : First Appeal No. 41 of 1972

The State of Assam

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-07-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1989 — Section 140, 3, 77

Citation : AIR 1975 Guw 62

Hon'ble Judges : D. Pathak, J; Baharul Islam, J

Bench : Division Bench

Advocate : M.A. Laskar, Govt, for the Appellant; A.R. Barooah and Dr. M.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Baharul Islam, J.—The plaintiff, the State of Assam, instituted a suit against the defendant, Union of India representing the Central Railway and Northeast Frontier Railway for realisation of Rs. 67,272.66 paise for non-delivery of 1480 bags of whole wheat.

2. The relevant facts are that the Regional Director of Food, Calcutta booked a consignment of 2970 bags of whole wheat from Kidderpore Doc, Calcutta to the Dhubri Railway Station by Railway under Invoice No. 1, R/R/ No. 217668 dated 21-4-1966 in the name of the Deputy Commissioner, Goalpara at Dhubri. Out of the aforesaid quantity the Railway authority delivered only 1490 bags and 1480 bags were not delivered. As in spite of notices the Railway failed to give delivery of the aforesaid 1480 bags, the plaintiff filed the present suit for confirmation for the amount mentioned above. Interest at 6 per cent, per annum was also claimed. It was stated that the loss was due to the negligence of the defendant Railway.

3. The defendant, Union of India representing the Northeast Frontier Railway, filed a written statement. Their material pleas were that the suit was bad for

want of a notice u/s 78-B of the Indian Railways Act. that, the notice u/s 80 of the CPC was invalid, that the suit was barred by limitation, that the claim was inflated, and that there was no negligence on the part of the employee of the defendant.

4. The trial Court framed ten issues including issue No. 6, which related to service of notices and issues Nos. 9 and 10, which related to reliefs only. The learned trial court decided all the issues, except issues Nos. 6. 9 and 10, in favour of the plaintiff. It decided issue No. 6 against the plaintiff, and, as such the suit was dismissed. Hence this appeal by the plaintiff.

5. Under issue No. 6 the learned trial Court held that the notice u/s 80 of the Civil P.C. was duly served and that it was a valid notice. This finding has not been challenged by the respondent before us. Shri M.A. Laskar, learned counsel appearing for the appellant, urges only one point before us, namely, that the finding of the learned trial court that Ext. 3 was not a valid notice u/s 78-B of the Railways Act, is erroneous.

6. The material portion of Sec. 78-B is in the following terms:

A person shall not be entitled to compensation for the loss, destruction, damage, deterioration or non-delivery of goods delivered to be so carried, unless his claim to

compensation has been preferred in writing by him or on his behalf-

(a) to the railway administration to which goods were delivered to be carried by railway, or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred, within six months from the date of the delivery of the goods for carriage by railway:

Provided that any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned above by or on behalf of the person within the said period of six months regarding the non-delivery or delay in delivery of goods with particulars sufficient to identify, the consignment of such goods shall, for the purposes of this section, be deemed to be a claim to the refund or compensation.

Section 78-B, inter alia, provides that a notice under this section shall be preferred in writing by the claimant or on his behalf to the Railway administration to which the goods were delivered or to the Railway administration on whose Railway the destination station lies. The claim must be preferred within six months. Clauses (a) and (b) enjoin as to whom the notice is to be addressed. The proviso to the section provides for the contents of the notice or claim. The proviso should be liberally construed, but the contents of the notice of claim in writing shall be such as to give the Railway Administration sufficient particulars of the goods as to identify the consignment of goods. Section 78-B is mandatory.

If the claim has not been preferred in writing under Sec. 78-B, no person shall be entitled to compensation for the loss, destruction, damage, deterioration or non-delivery of goods delivered to the Railway. Section 78-B was substituted for the old Section 77 by the amending Act 39 of 1961, with the addition of the proviso.

Interpreting the old Section 77 of the Railways Act their Lordships of the Supreme Court in *Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others*, have observed:

The High Courts in India have taken the view that the object of service of notice under this provision is essentially to enable the railway administration to make an enquiry and investigation as to whether the loss, destruction or deterioration was due to the consignor's laches or to the wilful neglect of the railway administration and its servants and further to prevent stale and possibly dishonest claims being made when owing to delay it may be practically impossible to trace the transaction or check the allegations made by the consignor.

Bearing in mind the object of the section it has also been held by several High Courts that a notice u/s 77 should be liberally construed. In our opinion that would be the proper way of construing a notice under that section. In enacting the section the intention of the legislature must have been to afford only a protection to the railway administration against fraud and not to provide a means for depriving the consignors of their legitimate claims for compensation for the loss of or damage caused to their consignments during the course of transit on the railways.

7. In the instant case the claim u/s 78-B was preferred by the notice proved as Ext. 3 in the case. In Ext. 3 the claimant has mentioned the quantity of goods booked, the quantity delivered and the quantity not delivered. The number of Invoice, number of the R/R and its date have also been mentioned. It has also been mentioned that the goods were booked from Kidderpore Dock to the Dhubri Railway Station. It is not disputed that this claim was preferred within the period of six months. In our opinion, therefore, Ext. 3 is in substantial compliance of the proviso to Section 78-B.

8. We are then to examine whether the claim was preferred to the Railway administration within the meaning of Cls. (a) and (b) of Section 78-B. Railway administration has been defined under sub-section (6) of S. 3 of the Railways Act as follows:

"railway administration" or "administration", in the case of a railway administered by the Government means the manager of the railway and includes the Government.

The notice u/s 78-B, therefore, has to be preferred before the Manager or the Government, in the instant case, the Union of India.

The notice (Ext. 3) was addressed to the "Station Master, N.F. Rly. Dhubri" and a

copy of this notice purports to have been sent to "The Chief Transportation Supdt., N.F. Rly. Pandu for information and necessary action." Ext. 3 was served on the Station Master, N.F. Railway, Dhubri on 19-8-1966 as is disclosed by the relevant entry Ext. 14 (1) made in the Dak Book, Ext. 14. The Station Master of a Railway Station is not "railway administration" within the meaning of Section 78-B, nor the Chief Transportation Superintendent of a Railway can be construed as the General Manager of a Railway. As such, the Chief Transportation Superintendent of a Railway is not "railway administration" within the meaning of Section 78-B. That apart, there is no evidence on record to show that a copy of Ext. 3 was, in fact, served on the Chief Transportation Superintendent. We, therefore, hold that no claim was preferred by the plaintiff to the "railway administration" in question, and, as such, the notice (Ext. 3) is not in compliance with Section 78-B of the Railways Act.

9. Shri Laskar in support of his contention relies on a decision of this Court reported in AIR 1971 A&N 41, in which it was held that a notice of claim for compensation sent to the Station Master and Commercial Inspector with a copy to the Chief Commercial Superintendent to be in compliance with Section 78-B. The case in AIR 1971 A&N 41 (supra) is distinguishable on facts from the case in hand. Section 140 of the Railways Act provides that a notice under the Railways Act to be served on the railway administration may be served, in case of railways administered by the Government, on the General Manager or the Chief Commercial Superintendent, by delivering the notice on the Manager or the Chief Commercial Superintendent or by leaving it at his office or by forwarding it by post in a prepaid letter addressed to the Manager or the Chief Commercial Superintendent. In the instant case we have already held that the plaintiff has failed to prove that the notice was served on the General Manager or the Chief Commercial Superintendent. In the case reported in AIR 1971 A&N 41 (supra) although the notice was addressed to the Station Master, the General Manager had received a copy of the notice proved as Ext. 18 in the case and he took some action in the matter. In the instant case a copy of Ext. 3 has not been proved to have been served on the General Manager or on the Chief Commercial Superintendent. We, therefore, hold that the plaintiff has failed to prove that he preferred a claim before the railway administration as required by clauses (a) and (b) of Section 78-B of the Railways Act.

10. In the result this appeal fails and is dismissed with costs.

D. Pathak, J.

11. I agree.