
(1980) 09 AHC CK 0041
In the Allahabad High Court
Case No : Second Appeal No. 2038 of 1971

Union Northern Railway and Another	Vs	APPELLANT
Firm Anis Khan and Others		RESPONDENT

Date of Decision : 18-09-1980

Acts Referred:

Railways Act, 1890 — Section 78B

Citation : AIR 1981 All 18

Hon'ble Judges : Deoki Nandan, J

Bench : Single Bench

Advocate : Lalji Singh, for the Appellant; Hyder Husain, Dhruwa Narain, Sripat Narain Singh, I.H. Khan and Shahid Masud, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan, J.—The only point canvassed in this second appeal on behalf of the Railway Administration of the Northern and North-Eastern Railways is whether a claim addressed by the plaintiff-respondent to Divisional Traffic Superintendent, Varanasi, by means of a letter dated 27-8-1968, a copy of which is Ex. 17 on the record, was a sufficient compliance of the requirements of Section 78-B of the Indian Railways Act, 1890. The finding recorded by the lower appellate court is that although the claim was addressed to Divisional Traffic Superintendent, Varanasi, the Railway Administration took notice of it and the loss was assessed, vide-Ext. 18 dated 8-9-1968, by the Assistant Commercial Superintendent, Varanasi. According to the lower appellate court it is clear from this certificate that the claim addressed by the plaintiffs to the D. T. S. Varanasi ultimately reached the Commercial Superintendent who acted upon it and deputed an officer of the department to assess the loss and assessment certificate was issued by the Assistant Commercial Superintendent on behalf of the Commercial Superintendent, "and that" the claim addressed by the plaintiffs (Ex. 17) to the D. T. S. can thus be called to be an information demanded or inquiry made in writing from or complaint made in writing to the Railway

administration concerned as laid down by the proviso attached to Section 78-B of the Indian Railways Act.

2. The original of the claim letter Ext. 17 was obviously in the possession of the Railway Administration. The Railway administration did not produce it and yet raised the plea in its written statement to the effect that the Divisional Traffic Superintendent, Varanasi was not a competent authority in law to receive the claim notices u/s 78-B and that in any case it was unsigned and bore wrong booking particulars. I even gave an opportunity to the Railway Administration to produce the original of Ex. 17 in order to see whether the plea that it was unsigned was correct or not, and also to see whether the finding of the lower appellate court that it must have reached the Chief Commercial Superintendent was correct or not, by ordering its discovering and production on oath, but an affidavit has been filed in this Court on behalf of the appellants that the original of that letter is not traceable. The non-production of the letter by the Railway Administration even in this Court doubly supports the inference drawn by the lower appellate court against the Railway Administration. Moreover, on the facts and in the circumstances of the case, the decree of the lower appellate court cannot be interfered with at the instance of the Railway Administration. Under the certificate granted by Assistant Commercial Superintendent, Varanasi dated 8-9-1968, Ext. 18, while granting delivery of the goods to the plaintiff, the Railway Administration admitted the liability to pay the sum of Rs. 4963.40 to the plaintiff-firm on account of the loss sustained by it. The plaintiff had claimed Rs. 5972.20 on account of the loss, but the two courts below decreed the claim for damages only in the sum of Rs. 4963.40. There was no dispute about the claim of Rs. 161/- on account of the proportionate amount of railway-freight and Rs. 15/- on account of the cost of notices sent. The Railway Administration could not have resisted the plaintiff's claim for the amount of Rs. 4963.40 which has been decreed as compensation for the loss incurred by the plaintiff. On complaint being made by its letter dated 29-8-1968 addressed to the Divisional Traffic Superintendent Varanasi of which copies were forwarded to D. C. I. Azamgarh Range and the Station Master Azamgarh also, it appears that the Railway Administration investigated into the matter and a responsible officer like the Assistant Commercial Superintendent, Varanasi, who must have been deputed for the purpose and must be presumed to have been acting within the scope of his authority, assessed the loss vide-Ext. 18. The Railway Administration thus admitted its liability to pay the said amount to the plaintiff, but it appears that the amount not having been paid for many months thereafter, the plaintiff served a notice dated 6-5-1969. He referred to the assessment made by the Assistant Commercial Superintendent Varanasi in that notice, but claimed compensation for the loss in the sum of Rs. 5972.20.

The amount does not appear to have been paid to the plaintiff in spite of that notice and he appears to have served a further notice dated 8-7-1969, vide Ext. 27 u/s 80 C. P. C. claiming the said amount of Rs. 5972.20 on account of the damage to the goods, Rs. 161/- on account of the loss of proportionate railway

fare and Rs. 15/- on account of notice charges. The amount was not paid even then. The suit giving rise to the present second appeal was thereafter filed on 10-9-1969. It has been decreed for the amount certified by the Assistant Commercial Superintendent, vide his certificate Ext. 18, to be the amount of loss suffered by the plaintiff. To now tell the plaintiff that his suit is liable to be dismissed because he did not make a proper claim within the time prescribed by law, as required by Section 78-B, is to make a mockery of the law. It is the Railway Administration which has been responsible for the delay in compensating the plaintiff for the loss of goods. The object of Section 78-B is not to deprive citizens of their lawful claims against the Railway Administration, but to prevent stale claims and to protect the Railway Administration against fraud by fixing a reasonable time of six months within which a claim for compensation on account of loss must be made inasmuch as it becomes more and more difficult to investigate into cases of loss to the goods or to assess the loss occasioned by damage to the goods or to fix responsibility for the same, in case the claim is not lodged by the person concerned as soon as may be after the occurrence of the loss or damage. I am supported in this view by the observations of the Supreme Court made in *G. G. In Governor General in Council Vs. Musaddi Lal*, in the context of the corresponding Section 77 of the Railways Act, as it stood before the amendments made by Act 39 of 1961. Indeed, as observed by the Supreme Court in the case of *Niranjanlal Agarwalla Vs. Union of India (UOI)*, the rigour of the provision has been considerably lessened by the amendments made by Act No. 39 of 1961.

3. So far as the facts of the present case are concerned, the Railway Administration could not take advantage of their own wrong by not paying the amount assessed to be due to the plaintiff by the Assistant Commercial Superintendent, vide Ext. 18, by pleading want of a notice u/s 78-B of the Indian Railways Act. The plaintiff's letter dated 27-8-1968 in response to which the Assistant Commercial Superintendent of the Railway Administration concerned assessed the plaintiff's loss must be deemed to have been a proper claim as contemplated by Section 78-B. The object of that provision was satisfied, more particularly in the light of the proviso added thereto, for the concerned authority of the Railway Administration was moved by that letter, Ext. 17, into making the required enquiry about the plaintiff's claim and to assess the loss suffered by it. As held by the Supreme Court in the context of Section 77 of the Railways Act, before its amendment, in *Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others*, the provision has to be liberally construed. The same rule applies to Section 78-B after the amendment and in view of the proviso the Supreme Court has even observed in the case of *Niranjanlal Agarwalla Vs. Union of India (UOI)*, that the kind of question that has been raised in the present case and used to be raised in the past, has now become academic in view of amendments to the Railways Act; the amendment referred to being the addition of the proviso which we now find in Section 78-B, and the addition of the Chief Commercial Superintendent as one of the authorities on which notice could be

served u/s 140 of the Indian Railways Act.

4. I may here observe that under the proviso, the information or the enquiry or the complaint, which is deemed to be a claim for refund or compensation within the meaning of that provision, has to be made "to any of the Railway Administrations to which the goods were delivered "or" on whose railway the destination station lies or the loss, destruction, damage or deterioration occurred." "It was pointed out by the learned Standing Counsel for the "Railway Administration that the term "Railway Administration" has been defined under Clause (6) of Section 3 of the Indian Railways Act, to mean, in the case of State Railways, "the Manager of the Railway and includes the Government, and that u/s 140 of the Indian Railways Act any notice or other document to be served on a Railway Administration may be served in the case of State Railways on the Manager or Chief Commercial Superintendent by delivering the notice or other document to him or by leaving it at his office or by forwarding it by post in a prepaid letter addressed to him and registered under the Indian Post Office Act. The contention raised by the learned Standing counsel was that even under the proviso, the demand for information or the enquiry or the complaint had to be addressed to the Railway Administration concerned and that means, according to the definition u/s 3 (6), the Manager of the Railway or Secretary to the Government, and according to Section 140 it could be made only by leaving the letter demanding information or making an enquiry or the complaint in the office of the Manager or the Chief Commercial Superintendent of the Railway concerned or forwarding it by registered post to either of the said officers of the Railways. According to the learned counsel inasmuch as the claim for compensation made by the plaintiff's letter dated 27-8-1968, vide Ext. 17, was addressed to the Divisional Traffic Superintendent, Varanasi it could not be deemed to be the proper claim within S. 78-B.

5. Apart from what has been said above, in the light of the facts of the present case, I am inclined to think that the term "Railway Administration", as used in Section 78-B of the Indian Railways Act, cannot be given the narrow interpretation sought to be placed on it by the learned Standing Counsel. The kinds of information, enquiry or complaint spoken of by the proviso are in the nature of things not expected to be made to the executive head of the Railway Administration concerned. Information about the non-delivery of the loss of goods is generally sought from, or enquiry about them made from the nearest officer concerned who is available on the spot. If I want to find out whether certain goods booked to me have been received, I shall be misdirecting the enquiry to the General Manager of Railway concerned and shall be acting properly if I make that enquiry from the goods clerk concerned. The only requirement is that the demand for information or the enquiry or the complaint must be made in writing. I, therefore, think in the context of Section 78B, the Railway Administration means the proper Officer of the Railway Administration concerned, of course, if I do not know who the proper officer is, the requirements of the law will be satisfied if I make the demand for information or enquiry from,

or address my complaint to the Manager of the Railway Administration concerned and send the letter by registered post, but if I do know that the Railway Administration has deputed a particular officer as the person concerned, and authorised to give me the information demanded or to attend to my enquiry or complaint, it cannot be said that the demand for information or the enquiry or the complaint is not addressed to the proper person within the meaning of Section 78-B.

The rule of interpretation is that the definition clause is to be read subject to the context.

6. There is no merit in this appeal and it is dismissed with costs.