
(1962) 02 KL CK 0011
In the High Court Of Kerala
Case No : A.S. No. 447 of 1957

Union of India and Another APPELLANT
Vs
Haji Abdul Karim Sait and Another RESPONDENT

Date of Decision : 20-02-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1962) KLJ 530

Hon'ble Judges : M.S. Menon, C.J.; P. Govindan Nair, J

Bench : Division Bench

Advocate : K.P. Pathrose, for the Appellant; T.S. Krishnamoorthy Iyer for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, C.J.—The defendants in O. S. No. 24 of 1952 of the District Court of Trivandrum are the appellants before us. They are the Union of India and the General Manager of the Southern Railway, Madras. The claim made in the suit, and decreed, was for short delivery of certain bales of cloth. The goods were booked at Ahmedabad on the Western Railway (Ex. --B. B. & C.I. Railway) for delivery at Trivandrum on the Southern Railway. It has been found that the missing bales were stolen while on the former railway, and that finding is not challenged before us.

2. The first question urged before us on behalf of the appellants is that the suit was bad for non-compliance with section 80 of the Code of Civil Procedure, 1908. That section provides that no suit shall be instituted against the Central Government where it relates to a railway until the expiration of two months next after notice in writing has been delivered to, or left at the office of, the General Manager of that railway. The notice under the section was given in this case only to the General Manager of the Southern Railway. It is agreed that no notice was issued to the General Manager of the Western Railway.

3. The question for determination is whether the suit relates to the Southern Railway. If it does not, the notice issued is insufficient, and the appeal has to be allowed.

4. The question has to be resolved in the light of section 80 of the Indian Railways Act, 1890, which deals with suits for compensation in relation to through-booked traffic. That section provides that

notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration,

a suit for compensation for loss, destruction or deterioration of goods where the goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration to which the goods were delivered by the consignor thereof or against the railway administration on whose railway the loss, destruction or deterioration occurred.

5. As pointed out by the Supreme Court in Governor General in Council Vs. Musaddi Lal, the expression "loss, destruction or deterioration" means loss or destruction or deterioration of the goods and the consequent loss to the owner thereof, and non-delivery of the goods is covered by the expression. It is not contended that what has occurred in this case is not a loss within the meaning of section 80 of the Indian Railways Act, 1890.

6. In this case the delivery of the goods by the consignor was to the Western Railway and the loss also occurred on that railway. Such being the case the General Manager to whom the notice should have been issued u/s 80 of the Code of Civil Procedure, 1908, was the General Manager of the Western Railway. No notice, as already stated, was issued to him.

7. There was a wide divergence of judicial opinion on the exact relationship between a consignor and the receiving railway and the other railway systems over which the goods had to be carried in order to reach their destination. In Governor-General of India in Council Vs. Sukhdeo Ram Marwari and Another, , Sinha J.--the present Chief Justice of India--surveyed the ease-law on the subject and observed:

Hence, it may be said that the legislature intervened in the year 1890, and laid down a specific rule of law governing the liabilities of the different railway administrations as regards compensation for loss, etc., caused to the owner of the goods carried over those several railway systems. Section 80, therefore, being a specific provision in this behalf must be given effect to, irrespective of any other considerations based on the doctrine of agency or of partnership which may lead to conflicting results. When the legislature has intervened to make the position absolutely clear, it is not safe to appeal to certain doctrines of law of general application.

8. What section 80 of the Indian Railways Act, 1890, has done is easy to

understand. It has given the consignor the choice of claiming his remedy either against the railway administration to which the goods were consigned or against the railway administration on which the loss occurred and barred his right of action, if any, against all the other railway administrations over which the goods might have been carried. In other words the consignor has been given an alternative and exclusive remedy against one of two railway administrations.

9. The fact that most of the railway systems in this country are now owned by the Union of India is reflected in the definition of the expression "railway administration" in section 3(6) of the Indian Railways Act, 1890, and has certainly made an impact on the provisions of section 80 of that Act as pointed out in *P.R. Narayanaswami Iyer and Others Vs. Union of India*, and 1960 KLT 352. But neither of those cases is an authority for the proposition that there can be a compliance with section 80 of the Code of Civil Procedure, 1908, without issuing a notice, "in the case of a suit against the Central Government where it relates to a railway," to the General Manager of that railway. The suit from which this appeal arises can relate in the proved circumstances of the case only to the Western Railway and as no notice has been issued to the General Manager of that railway it cannot but fail. As pointed out by the Privy Council in AIR 1927 176 (Privy Council) the provisions of section 80 of the Code of Civil Procedure, 1908, are mandatory and explicit and admit of no implications or exceptions.

10. In the light of what is stated above it is unnecessary to consider the second contention of the appellants, a contention based on section 77 of the Indian Railways Act, 1890. That contention is not considered in this judgment. The appeal succeeds and is hereby allowed. The parties will bear their costs throughout.