

(1971) 04 MAD CK 0013

In the Madras High Court

Case No : Second Appeal No. 1869 of 1967

Union of India and Another

APPELLANT

Vs

Jetmall Sukanraj

RESPONDENT

Date of Decision : 21-04-1971

Acts Referred:

Contract Act, 1872 — Section 151, 152, 161
Railways Act, 1989 — Section 13, 72, 72

Citation : AIR 1972 Mad 134 : (1971) 84 LW 719 : (1971) 2 MLJ 257

Hon'ble Judges : Ismail, J

Bench : Single Bench

Judgement

1. The defendants 1 and 2 in O. S. No. 1975 of 1963 on the file of the City Civil Court, Madras who failed before the trial court, as well as the

first appellate Judge are the appellants before this court. The respondent herein placed an order at Madras with M/s. P. Savan and Co. at Calcutta

(3rd defendant in the suit) for supply of 12 cases of camphor. The third defendant entrusted 12 cases of camphor to the first appellant, Eastern

Railway at Calcutta, to be carried over to Madras by the respondent herein at Madras. The second appellant collected the freight for all the 12

cases from the respondent but gave delivery only of ten cases and did not deliver the other two cases. The case of the respondent with regard to

the other two cases was that he was asked to come and enquire at the office from time to time; that notwithstanding many enquiries made by him.

he did not obtain delivery of the two cases of camphor; that ultimately he issued a notice and made a claim for the value of the two cases of

camphor including the freight paid therefor; and that the appellants herein repudiated their liability., Consequently, the suit was instituted for

recovery of the value of the two cases which were not delivered to the respondent. The appellants put forward many defences one of which was

that there was a running theft and as a result of such the two cases were lost and therefore they could not be delivered to the respondent.

Another contention based upon Section 77-B of the Railways Act after its amendment by the Central Act 39 of 1961, was that camphor was one

of the scheduled goods and with reference to such goods the appellants were not liable to pay any compensation unless the consignor declared the

contents and value in writing and if so required by the railway, paid or engaged to pay in writing a percentage on the value so declared by way of

compensation for the increased risk; and in this particular case no such declaration of the contents and value had been made and therefore under S.

77-B of the Railways Act, the appellants were not liable to pay compensation. The learned Judge as well as the first appellate Judge came to the

conclusion that the appellants had not placed any evidence whatever before them to show that the two cases in question were the subject-matter of

a running theft and therefore they were lost by theft. With regard to the argument based upon S. 77-B of the Railways Act, the courts below

rejected the case of the appellants. Ultimately they decreed the suit. Hence the present second appeal.

2. I may immediately mention that the conclusion of the courts below that the appellants have not placed any evidence whatever before them to

show that the two cases which were not delivered to the respondent herein were the subject-matter of fact from the very nature of the case, this

conclusion could not be challenged and was not challenged.

3. Therefore, the only question that remains for consideration is, whether the appellants can escape from their liability to pay compensation under

the provisions of Section 77-B of the Railways Act. Section 77-B runs as follows;

77-B. Further provision with respect to the responsibility of a railway administration as a carrier of articles of special value: (1) Notwithstanding

anything contained in the provisions of this Chapter. When any articles mentioned in the Second Schedule are contained in any parcel or package

delivered to a railway administration to be carried by railway and the value of such articles in the parcel or package exceeds five hundred rupees,

the railway administration shall not be responsible for the loss, destruction,

damage or deterioration of the parcel or package unless the person

sending or delivering the parcel or package to the administration caused its value and contents to be declared in writing or declared them in writing

at the time of the delivery of the parcel or the package for carriage by railway, and if so required by the administration, paid or engaged to pay in

writing a percentage on the value so declared by way of compensation for the increased risk.

(2) When any parcel or package of which the value has been declared under subsection (1) has been lost destroyed, or damaged or has

deteriorated, the compensation recoverable in respect of such loss, destruction, damage or deterioration shall not exceed the value so declared.

(3) A railway administration may make it a condition of carrying a parcel or package declared to contain any article mentioned in the Second

Schedule that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel or package actually contains

the article declared to be therein.

(4) The Central Government may by notification in the Official Gazette, direct that any article mentioned in the Second Schedule may, without

being contained in any parcel or package, be delivered to a railway administration to be carried by railway and upon the issue of such notification,

the provisions of this section shall apply in relation to such article as they apply in relation to any article mentioned in the Second Schedule and

contained in any parcel or package.

The case put forward by the respondent and accepted by the courts below was that this section exonerated the railways from their liability only in

cases of loss, destruction, damage or deterioration of a parcel or package and not in the case of non-delivery of a parcel or package. This

contention as well as the acceptance of the same by the courts below *prima facie* appears to be correct, because the said section does not refer to

non-delivery at all. The only question for consideration is, whether the *prima facie* correctness of the said conclusion can be displaced with

reference to any other considerations appearing in any other provision of the Railways Act. An attempt was sought to be made before me on the

basis of the judgments of the Supreme Court in *Governor General in Council Vs. Musaddi Lal*, and in the *Union of India (UOI) Vs. Mahadeolal*

Prabhudayal, . for holding that the expression ""loss"" will cover non-delivery also and non-delivery will not give rise to an independent cause of

action. However, after the amendment of the Railways Act by the Central Act 39 of 1961, there is no scope for this argument.

Chapter VII of the Indian Railways Act deals with the responsibility of railway administration as carriers, Section 72 of the Act, as it stood prior to

is amendment by the Central Act 39 of 1961, provided for the responsibility of the railways only as that of a bailee. However, a basic change with

regard to the nature of this responsibility was effected by the Central Act 39 of 1961. By Section 13 of this amendment Act 39 of 1961. Sections

72, 72-A, 73, 74, 74-A, 74-B, 74-C 74-D, 74-E, 75, 76, 77 and 78 of the principal Act were repealed and were replaced by new Sections 72

to 78-B., The most important change effected by the group of sections is to transform the responsibility of the railway from that of a bailee to that

of a common carrier, namely, insurer,. Section 72 provided for execution of forwarding notes in respect of animals or goods carried on a railway.

Section 73 defines the general responsibility of a railway administration as a carrier of animals and goods. While dealing with this responsibility, this

section provides for the responsibility ""for loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to the

administration to be carried by railway."" Section 74 defines the responsibility of a railway administration for animals or goods carried at owner's

risk rate. Sub-section (3) of this section also refers to the responsibility of the railway administration for any loss, destruction, damage,

deterioration or non-delivery in transit of such animals or goods. Section 75 deals with the responsibility of the railway administration as carrier of

luggage. This section also refers to the responsibility of the railway administration for the loss, destruction, damage, deterioration or non-delivery.

Section 75-A of the Act deals with the responsibility of the railway administration for goods carried in open vehicles, and from the very nature of

the case, the responsibility is confined only to destruction, deterioration or damage which may arise. Section 76 deals with the responsibility for

deviation of route and Section 76-B deals with the responsibility for deviation of route and Section 76-B deals with the responsibility for wrong

delivery. Section 76-C deals with the responsibility for goods to be delivered at siding. Here again, the expression "responsibility" is used with

reference to loss, destruction, damage, deterioration or non-delivery of the goods. Sec. 76-D deals with the responsibility of two or more railway

administration for through traffic, while Section 76-E deals with the responsibility of railway administration in case of traffic passing over railways in

India and railways in foreign countries. Section 76-F is exclusively confined to the burden of proving misconduct in case of non-delivery or

pilferage in transit of goods carried at owner's risk rate. Section 77 deals with the responsibility of the railway administration after termination of

transit and sub-section (1) of this section provides that the responsibility of the railway administration shall be that of a bailee under Sections 151,

152 and 161 of the Indian Contract Act. 1872, for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway within

a period of 30 days after the termination of transit.

Section 77-A makes further provision with respect to the responsibility of the railway administration as a carrier of animals. That again refers to the

expressions "loss, destruction, damage, deterioration or non-delivery of any animal delivered to the administration to be carried by railway.

Section 77-B is the section with which we are immediately concerned and I have already extracted this Section. Section 77-C deals with the

responsibility of the railway administration for damage, deterioration etc. of goods in defective condition or defectively packed. Section 78

exonerates the railway administration from responsibility in certain cases and this section also uses the expression "'loss, destruction, damage,

deterioration or non-delivery.'" Section 78-A provides for the burden of proof in suits against railway administration for compensation for any

delay, loss, destruction, damage, deterioration or non-delivery. Section 78-B provides for making of claims for compensation or refund or over

charge in writing within a period of six months from the date of delivery of the goods or animals to the railway for carriage and refers to

compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods. From the above it will be seen that generally as

regards the responsibility of the railway five expressions namely, loss, destruction, damage, deterioration or non-delivery are used.

4. The point to be noted in this connection is that while Section 72 and the cognate sections of the Railways Act before its amendment by the

Central Act 39 of 1961 used only three expressions "loss, destruction and deterioration" the corresponding provisions after the amendment Act of

1961 (Act 39 of 1961) refer to two additional expressions, namely, "damages and "non-delivery". From this, simply as a matter of construction, it

will follow that non-delivery is treated as an independent from the cause of action, . district and different from the cause of action based upon loss

of the goods. Therefore, when the Legislature has used the five expressions, namely, loss, destruction, deterioration, damage and non-delivery

separately, each one of the expressions must be given an appropriate meaning so as to give full effect to the intention of the Legislature,. It is in

view of this consideration alone, I stated earlier in this judgment that the decisions of the Supreme Court in Governor General in Council Vs.

Musaddi Lal, and Union of India (UOI) Vs. Mahadeolal Prabhudayal, dealing with the construction of Section 77 of the Railways Act 39 of 1961,

will not be of any avail in considering the present section.

5. The point that has to be noticed in the present case is, that out of the five expressions referred to already. Section 77-B used only four

expressions "loss, destruction, deterioration and damage" and the expression, "non-delivery" does not occur in Section 77-B at all. Prima facie

therefore it follows that, whether the omission to include the expression "non-delivery" in section 77-B was intentional or accidental, the result is,

the compensation for non-delivery is not comprehended by Section 77-B of the Act and when that ground is not founding Section 77-B, it is not

open to a court to supply the omission by any process of interpretation. The position is well settled.

It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to

justify the inference that the legislature intended something which it omitted to express. Lord Mersey said. "It is a strong thing to read into an Act of

Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do." (Thompson v. Goold and Co., 1910 AC

409). "We are not entitled" said Lord Loreburn L. C. " to read words into an Act of Parliament unless clear reason for it is to be found within the

four corners of the Act itself". (Vickers Sons and Maxim Ltd. v. Evans. 1910 AC 444). A case not provided for in statutes is not to be dealt with

merely because there seems no good reason why it should have been omitted, and the omission appears in consequence to have been unintentional.

(Maxwell on Interpretation of Statutes. 12th Edn. p.33).

6. To similar effect is the statement contained in Craies on Statute Law. 5th Edn. pages 67-68 which is apposite:-

The Judges may not wrest the language of Parliament even to avoid an obvious mischief..... In Crawford v. Spooner, 1846 7 Moo PC 1,

the Judicial Committee said,.. "We cannot aid the Legislature's defective phrasing of an Act, we cannot add an mend, and by construction, make

deficiencies which are left there." In other words, the language of Acts of Parliament, and more especially of modern Acts must neither be

extended beyond its natural and proper limits, in order to supply omissions or defects, nor strained to meet the justice of an individual case. "If"

said Lord Brougham in Gwynne v. Burnell, 1840 7 C1 & F 572, "we depart from the plain and obvious meaning on account of such views (as

those pressed in argument on 43 Geor 3 c. 99) we do not in truth construe the Act. but alter it. We add words to it, or vary the words in which its

provisions are couched. We supply a defect which the Legislature could easily have supplied, and are making the law not interpreting it. This

becomes peculiarly improper in dealing with a modern statute, because the extreme conscience of the ancient statutes was the only ground for the

sort of legislative interpretation frequently put upon their words by the Judges. The prolixity of modern statutes, so very remarkable of late. affords

no grounds to justify such a sort of interpretation.

In Sri Ram Ram Narain Medhi Vs. The State of Bombay, the Supreme Court pointed out:--

It the language of the enactment is clear and unambiguous it would not be legitimate for the court to add any words thereto and evolve therefrom,

some sense which may be said to carry out the supposed intentions of the legislature. The intention of the legislature is to be gathered only from the

words used by it and no such liberties can be taken by the courts for effectuating a supposed intention of the Legislature.

7. Once the courts transcend these limitations, instead of interpreting law, they will be encroaching on the functions of the Legislature itself. As far

as the present case is concerned, as I have already pointed out non-delivery has been made an independent cause of action by the amendment

Act, 39 of 1961, and non-delivery may be consequence of loss or destruction or it may be a consequence of other cause. Therefore, Section 77-

B of the Act, even as it stands is workable and can be given effect to fully and hence there is no compelling necessity to supply the deficiency or

omission, even assuming that the omission of the expression ""non-delivery"" in that section is unintentional.

8. As I have pointed out already, each one of the above five expressions will have to be given its appropriate meaning and if there is any

overlapping between any two. that must be reconciled, consistent with commonsense and the scheme of the Act. Out of the five expressions,

namely, loss, destruction, deterioration, damage and non-delivery ""damage"" and ""deterioration"" need not necessarily result in non-delivery, because

even damaged and deteriorated goods can be delivered. On the other hand, if the goods are lost or destroyed. there cannot be a delivery of such

goods. From this point of view, it can be said that non-delivery may result from loss of goods is the cause for failure to deliver the goods or the

cause of non-delivery Consequently even where a plaintiff comes before a court and claims compensation on the ground of non-delivery, since he

is not likely to know the exact cause of non-delivery it may be open, in appropriate cases, to the railway administration, to put forward a defence

on the basis of Section 77-B of the Act by proving that since the goods were lost or destroyed. they could not be given delivery of and therefore

that section would apply.

It must be noticed in this context that every case of loss or destruction will necessarily result in non-delivery, while every case of non-delivery need

not be a consequence of loss or destruction of the goods. For instance. the goods might have been delivered to a wrong person and therefore

there is non-delivery to the rightful person or the goods might have been appropriated by the railway administration to its own use under a wrong

impression and therefore they are not available for delivery and consequent non-delivery results. It is from this point of view alone. I am mentioning

that when non-delivery can be correlated to the loss or destruction of goods. it may be open to the railway administration to prove such loss or

destruction and contend that it is such loss or destruction alone which has resulted in the non-delivery and therefore protection given to the railway

administration u/s 77-B of the Act will be available though it is not necessary to express any final opinion on this aspect, in view of the facts of this

case.

9. In this particular case, as I have pointed out already, the appellants attempted an explanation, namely, that the two cases were the subject-

matter of a running theft, but they did not produce any evidence to substantiate that case and therefore the courts below came to the conclusion

that it was not proved that the two cases had been lost. Once it is not proved that the, two cases had been lost or destroyed, then, non-delivery of

the two cases to the, respondent must be the result of causes other than loss or destruction. If so, looked at from any point of view, Section 77-B

of the Railways Act cannot afford any protection to the appellants herein against the claim for compensation made by the respondent herein. I may

mention in this context that the defence with reference to the Section 77-B of the Railways Act was raised by the appellants on the basis that the

declaration contemplated by that section had not been made by the consignor, since the goods in question are scheduled goods coming within the

scope of Section 77-B of the Act and the courts below have proceeded only on that basis, but they have rejected the defence of the appellants

herein solely on the ground that the section has not afforded any protection against non-delivery.

10. Under these circumstances the conclusion of the courts below is correct and does not call for any interference, Hence the second appeal fails

and is dismissed. There will be no order as to costs. No leave.

11. Appeal dismissed.