

(1978) 09 GUJ CK 0005

In the Gujarat High Court

Case No : Civil Revision Application No. 50 of 1977

Union of India and Another

APPELLANT

Vs

K. Mansukhram and Sons

RESPONDENT

Date of Decision : 08-09-1978

Acts Referred:

Railways Act, 1890 — Section 77

Citation : AIR 1979 Guj 176 : (1979) 20 GLR 333

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Advocate : M.M. Shah, for the Appellant; B.B. Shah, for the Respondent

Judgement

1. This is a revision application by the Union of India against the decree in the sum of Rs. 1583.38 passed against them by the Court of Small Causes, Ahmedabad in the Civil Suit No. 6148 of 1973. The respondent herein is the plaintiff-firm that had filed the aforesaid suit for recovering the amount of Rs. 1,600 by way of compensation on account of the non-delivery of the suit consignment, notice charges and interest on the amount claimed, The plaintiff alleged that one bale of cloth was consigned from Ahmedabad to Buxar on 26-11-71, but the Railway administration did not at all deliver the same to the consignee. The railway on various technical pleas resisted the suit, but the substantial plea that was raised was that the defendants were protected under S. 77B of the Indian Railways Act. The said plea was negative and the decree came to be passed.

2. Mr. M. M. Shah, the learned Advocate for the Union of India, owning and representing the Eastern and Western Railways, urged that the plaintiff consignor had not mentioned the value of the goods, namely, T.C, cloth, which was mentioned in the Second Schedule appended to the Act, and consequently the administration was not responsible for the loss, destruction, damage or deterioration of the goods. It is no longer in dispute before me that the consignor mentioned that the parcel contained T.C. cloth and that this item falls in the

excepted category. It is also an admitted position that though the nature of the goods was written, its value was not stated. It is also conceded that the consignment was not delivered. The only contention that was put forward was that S. 77B of the Act exonerated the administration from liability because the value of the articles in the parcel exceeded Rs. 500 and the consignor delivering the parcel to the administration failed to cause its value to be declared in writing.

3. The bar contained in S. 77B is absolute, but it does not deal with any delivery. Ss. 77 and 77A specifically mention loss, destruction, damage, deterioration or non-delivery as the grounds occasioning the claim for damages. Curiously enough, in S. 77B, no delivery is not mentioned, but only four items are mentioned, namely, loss, destruction, damage and deterioration. When the Legislature has consistently used abovementioned five specific categories, it must be deemed to have done with a purpose. It must not have thought of including loss arising out of non-delivery as included in the genus "loss." Were it so, the term "non-delivery" would not have been used in those earlier provisions. It is, therefore, evident that the term "non-delivery" according to the Legislature is something distinct from loss.

Mr. Shah for the Union of India, however, urged that if the plaintiff showed that the goods were in fact with the Administration, but they were stubbornly declining to deliver, then alone it would be a case of non-delivery. He submitted that in the case on hand, it was not the plaintiffs' say that the goods were with the administration and still they declined to deliver and he, therefore, submitted that the only case the plaintiff put forward was the case of loss, though they tried to use that word "non-delivery" in the plaint and in their evidence. What has happened to the goods after they were delivered to the Administration is a matter within the special knowledge of the administration. Though there was a specific issue No. 4 to the effect as to whether the defendants were protected under: Section 77B of the Act or not, the Administration chose not to lead any evidence and wanted to shield their inefficient employees' gross negligence, if not dishonesty, by taking recourse to Section 77B of the Act. It is a matter of regret nay shame, that the Administration owned by the Union of India does so.

4. On the question of law, the judgment of the single Judge of the Madras High Court in the case of Union of India and Another Vs. Jetmall Sukanraj, gives a clinching answer. There, the observations are*: _

"After the amendment of the Railways Act in 1961, non-deliver has been made an independent cause of action, distinct and different from the cause of action based upon the loss of the goods. Non-delivery may be consequence of loss or destruction or it may be a consequence of other cause. 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. 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 found in Section 77-B, it is not open to a Court to supply the omission by any process of interpretation.

Therefore, 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. But where it is not proved that the articles in question had been lost or destroyed non-delivery of the articles must be the result of causes other than loss or destruction and Section 77-B cannot afford any protection to the railway administration against the claim for compensation."

As I fully accept the above-mentioned view expressed by the Madras High Court, I do not reiterate those grounds. (See AIR Head Note-Ed.)

5. For the reasons stated above, there is no merit whatsoever in this revision application, which is hereby dismissed. Rule is discharged with costs.

6. Revision dismissed.