

(1984) 08 MAD CK 0018
In the Madras High Court
Case No : App. No. 399 of 1978

Union of India and Another		APPELLANT
	Vs	
St. Joseph Textiles, Karur		RESPONDENT

Date of Decision : 09-08-1984

Acts Referred:

Railways Act, 1890 — Section 77(1), 77(2), 77(4)

Citation : (1986) ACJ 164 : AIR 1985 Mad 360 : (1985) 1 MLJ 274

Hon'ble Judges : Swamikkannu, J;Mohan, J

Bench : Division Bench

Advocate : B.T. Seshadri, for the Appellant; M. Srinivasan, for R. Vedantham, for the Respondent

Judgement

Mohan, J.—Defendants I and 2, the union of India, Eastern Railway by its General Manager at Calcutta and the Union of India Southern

Railway by its General Manager, Park Town, Madras are the appellants before US.

2. The appeal arises out of O. S. 114 of 1975 on tile file of the Sub Court, Karur. The said suit as filed by the sole respondent herein for recovery

of a sum of Rs. 53,411-93. The averments in the plaint are as under : The plaintiff is a firm doing business in Textiles at Karur. One Ganesh

Chandra Das of Azim Ganj, West Bengal came to Karur. He selected handloom cloths worth about Rs. 53,441-93to be booked on plaintiff's self

pass to Azim Ganj City Railway Station. He sent the parcel w ay bill along with the demand draft for a sum of Rs. 52,672-93 being the price of the

goods supplied less railway freight of Rs. 769 to the State Bank of India at Jaiganj. It was undertaken to clear the demand draft by payment to the

Bank and take the parcel way bill from the Bank. The plaintiff booked for carriage at karur railway station oil 11-6-1973 under parcel way bill

835434 dated 11-6-1973. The plaintiff sent the said way bill and the demand draft to the State Bank of India at Jiajanj. The normal time for the goods to reach tile destination would be not less than thirty days. The State Bank of India delivered back the demand draft and the parcel way "bill to the plaintiff on 12-9-1973 for the reason that the payment was not forthcoming. Therefore o n 12-9-1971 3, the plaintiff addressed the Station Master, Azim Ganj, requesting to re-book the, goods to Karur. The plaintiff also enclosed the original parcel way bill endorsed in its favour along with General Forwarding Note duly signed to enable the Station Master to rebook the goods to Karur. This letter was acknowledged by the Station Master, Azim Ganj, on 18-9-1973. He did not choose to send any reply. Thereafter, the plaintiff, sent in express reply-paid telegram on 4-10-1973. 1, was also followed by a letter of even date sent by registered post. To neither of these was there any reply. A copy of it was sent by post to the. Chief Commercial Superintendent, Eastern Railway, Calcutta. In response to the above, the Station Master of Azim Ganj City alone sent a reply on 15-10-73 stating that he had already sent a letter dated 27th Sept. 1973. Further the plaintiff's letter had been forwarded to the Divisional Commercial Superintendent, Eastern Railway Howrah, and Chief Commercial Superintendent, Eastern Railway, Calcutta and that he had not received any reply from the Officers. The matter would be disposed of as soon as the order was received from the Office. The plaintiff sent telegrams to the Chief Commercial Superintendent and the General Manager, Eastern Railway on 6-10-73. On, 8-10-73, the plaintiff addressed further letter by registered post to the Station Master, Azimganj, to the General Manager, Eastern Railway and tile Chief Commercial Superintendent, Eastern Railway by way of reminders. On 8th Oct. 1973 the plaintiff gave notices of claim for Rs. 53,441.93 as is required under S. 78 of the Railways Act to tile General Manager (Claims), Eastern Railway, Calcutta and the General Manager (Claims), Southern Railway, Madras. In those notices, it was stated that the Railway administration is grossly negligent and mis-conducted itself and it was careless in handling the goods and in not rebooking and delivering the goods back to the plaintiff. The notice was sent on 9-10-73 to the General Manager, Eastern Railway, Calcutta and General Manager, Southern Railway, Madras. The Chief Commercial Superintendent sent a letter dt.7-11-73

acknowledging the receipt of copy of suit notice. By the letter dt. 31-10-73, the plaintiff desired the Divisional Superintendent, Eastern Railway,

Howrah to return the Parcel Way Bill, which had been sent to the Station Master, Azimganj which according to the Station Master's letter had

been forwarded to the former for Action. To this also, there was no response. By reason of non-delivery of goods, the plaintiff has suffered

damages and therefore the defendants are bound to pay Rs. 53,441.93. Hence the suit.

3. In the written statement and additional written statement filed by the defendants, the stand taken is as follows :- It is denied that the plaintiff is the

owner of the goods. The particulars and the value of the goods are denied. The parcel and the parcel way bill were carried with due care and

caution. They reached Azimganj City Railway Station on 17-7-73 in good condition and were made available for delivery for more than seven days.

No one turned up for taking delivery. On 21-7-73, the parcels were taken delivery of by one Sunil Dutta against the Parcel Way Bill produced by

him under clear signature on payment of all charges due to the Railway. About two months after the termination of transit i.e. on 12-9-73, a

request is alleged to have been made to the Station Master of the destination for rebooking the parcels to Karur. The defendants are not Liable in

law for the alleged non-delivery of the suit parcels that occurred seven days after the termination of transit. In other words they would be protected

by S. 77(2) of the Railways Act. It is denied that there was any valid claim notice under S. 78B of the Railways Act. Nor again was there a proper

suit notice under S. 80, CPC. There was no negligence, misconduct, carelessness on the part of the defendants or any of its servants. The

defendants are not liable in cases where fraud was practised by the consignor or the consignee or their agents. The suit is bad for non-joinder of

the consignee. In any event, the suit claim is highly exaggerated. The delivery was effected in good faith. The plaintiff is responsible for the acts of

misconducts, carelessness and negligence. Even assuming that the Railway Receipt on which the delivery was effected is to be treated as not a

genuine one the railways are not liable and the loss occurred after seven days of the termination of transit of suit parcels at the destination. In the

reply statement, it is stated that for the delivery of the goods even (if) it is on a forged receipt, so far as it was done without good faith, the railways

would be responsible for the acts of misconduct.

4. On these pleadings, the following rime issues originally were framed. Thereafter on 12-9-77 two other additional issues were framed. They are as follows :--

1. Whether the plaintiff has got right, title and interest in the suit property.
2. Whether the plaintiff is a registered firm as per the provisions of the Partnership Act.
3. Whether Ganesh Chandra Das placed orders for the suit goods and desired the goods to be booked to Azimganj as contended by the plaintiff.
4. What is the value of the goods?
5. Whether there were valid notices under S. 78B of the Railways Act and S. 80, C.P.C.?
6. Whether there was gross and culpable negligence on the part of the defendants in handling the goods.
7. Whether the suit is bad for non-joinder of parties i.e. consignee?
8. Whether the defendants are absolved of the liability under the Railways Act relating to the suit claim or any other claim.
9. To what relief, if any, is the plaintiff entitled?

The following additional issues were framed on 12th Sept. 1977 : -

1. Whether the delivery pleaded by the defendants is true and in good faith.
 2. Whether the defendants are not liable under S. 77(2) of Railways Act.
5. On Issue No. 2, it was answered that the plaintiff is a registered firm as per the provisions of the Partnership Act. On issues 1 and 3 it was held that Ganesh Chandra Das placed orders for the suit goods and desired the suit goods to be booked to Azimganj City and that the plaintiff retained the title and ownership in the suit goods until the payment of price of the goods by Ganesh Chandra Das. He did not pay the price of the goods and in view of the circumstances the plaintiff has got right, title and interest in the suit goods so, as to enable the plaintiff to file the present suit. On issue No. 4 it was held that there is sufficient and satisfactory evidence available showing that the value of the suit goods is Rs. 53,441.93. On Issue No. 5, it was held that the notices under S. 78 B of the Railways Act and S. 80 Captive been issued and they are valid under law, Under issue No. 7, it was held that the suit was not bad for non-joinder. On issues 6, 8 and additional

issues 1 and 2, it was held that in so far as the delivery took place without good faith, on a forged railway receipt, the railways would be liable under S. 76B of the Railways Act. The protection under S. 77(2) of the said Act will not be applicable to the railways. Issue No. 9 was answered saying that the plaintiff would be entitled to the value of goods at Rs. 53,441.93 together with interest at 6%, per annum from the date of plaint till realisation. The plaintiff was also held to be entitled to costs. Thus, the suit was decreed as prayed for. Aggrieved by the judgment and decree, the defendants have come up in appeal before us.

6. Mr. B. T. Seshadri, learned counsel for the appellants urges the following points for our consideration. In the instant case, the records bear out

that on 1-7-73 the consignment booked by the plaintiff and sent by the railways reached the destination. Till 20th July 1973, there was no claim.

Thereafter on 2 (-7-73, the delivery was effected. Under those circumstances, having regard to the liability of the railways under S. 73 of the

Railways Act which speaks of the liability during transit that would not apply. Therefore it is only S. 77 of the said Act, that would apply. Under S.

77(I) of the Act, the liability of the railways is that of a bailee under Ss. 151, 152 and 161 of the Contract Act. In this case that again will not apply.

Therefore, it is only S. 77(2) that will squarely apply to the facts of this case. In other words, according to him the railway is not duty bound to

explain how the goods were delivered after the 7th day. Therefore, it would amount to a total extension of liability after a period of seven days.

This was so laid down by a Division Bench" of this Court in Loyd Bituman Products (P.) Ltd. Vs. Union of India (UOI), . At that time the

limitation that was contemplated under this Act was thirty days. It was now by reason of the amendment reduced to seven days.

7. Even in a case of non-delivery, whatever may be the reason, it would fall under S. 77(2) of the Railways Act. In considering the meaning of

non-delivery which arose under old Art, 11 of the Limitation Act where again it was a case of delivery on forged railway receipts, this court took

this view in Union of India v. Ramchand K. & Co. AIR 1974 vlad 335. Non-delivery implies failure to deliver for some reason or other. Then

again in Union of India and Another Vs. Jetmall Sukanraj, while considering the scope of S. 77B where non-delivery was riot included, it was held

that whatever may be the reason for failure to delivery that would amount to non-delivery. Even if there was wilful delivery to a person, who was

not entitled to the goods that would amount to non-delivery. It has been so laid down in *M & S. M. Ry. Co. Ltd. v. Haridoss Banmalidoss* ILR

(1919) Mad 871 : AIR 1919 Mad 140.

8. While considering the scope of S. 77, the Supreme Court held in *Governor General in Council Vs. Musaddi Lal*, that though the section

contemplates failure to deliver on account of three factors, namely 1) loss; 2) destruction; 3) deterioration, it would still apply to a case of

negligence or inadvertence. The learned counsel himself fairly concedes that this case may not be of much assistance because by reason of the

amendment, non-delivery has come to be included. The reason why it is cited is that where negligence as alleged in this case is made out, even then

it would amount to non-delivery. In *The Union of India (UOI) Vs. Firm Laxminarain Harnarain*, , where again the delivery \was made to a wrong

person under forged railway receipt, it was held that misdelivery would fail under loss as stated under S. 77. In a case, where the railway servant

himself committed theft under old S. 75 which corresponds to S. 77B of the new Act, the Delhi High Court in *Uttam Singh Kala Singh and Others*

Vs. Union of India and Others, held that such a case also would amount to non-delivery.

9. Lastly it is submitted that the learned single Judge of this court, in dealing with more or less identical situation held that S. 77(2) of the Railways

Act would give complete protection to the railways, if there is failure to deliver irrespective of the reasons, after the 7th day in transit.

10. For all these reasons, it is submitted that assuming for a moment that the railway wits careless or negligent in making delivery as against the

forged railway receipt, in so far as the Court below held that the railways would be liable under S. 76B of the Railways Act, the judgment cannot

be supported. It is argued that S. 77(2) will give complete protection to the railways because admittedly the plaintiff did riot ask for re-booking of

the goods within seven days as prescribed under S. 77(2) of the Act. For all these reasons the judgment and decree of the Court below are liable

to be set aside.

11. As against this, Mr. M. learned counsel for the respondent would urge that

the interpretation placed by the learned counsel for the Railways of

S. 77 is wrong, S. 77(1) talks of the duty of the railways its a bailee. It is not as a bailee under the Railways Act, but as a bailee under Ss. 151,

152 and 161 of the Contract Act. Having said so, when S. 77(2) talks of for any reason", it is referable to the earlier sub-section, S. 77(2) cannot

be construed in isolation . It must be construed in the context in which the Sub-section appears. Therefore what it emphasises is that the duty as a

bailee on the part of the railways ceases after the seventh day. However, still the liability as a "carrier" would apply because that is evident from S.

77(14) wherein the railways are still entitled to claim either wharfage or demurrage. This Position is clear by a reading of the

decision in Union of India (UOI) Vs. West Punjab Factories Ltd., .

12. In this case even when factually it is established that so far as the evidence of D.W. 1 is concerned, that has been disbelieved by the Court

below and Ex.B6 namely the railway receipt on which the delivery was effected, was held to be a forged one, the railways had not proved that the

delivery took place on 21-7-73. The failure on the part of the railways is established. There is every justification to hold that the delivery took

place even within seven days in transit. Therefore the plaintiff will be entitled to the decree. From that point of view, the decree can be upheld. The

interpretation placed on S.77 if accepted, would amount to putting a premium on the negligence or carelessness of the railways.

13. In reply Mr. B. T. Seshadri says that there is absolutely no interconnection between sub-sec. (2) and sub-sec. (4) of S. 77. Sub-sec. (4) of S.

77 talks of the entitlement of the railways to collect wharfage or demurrage so long as the goods are available for delivery, certainly it is not open

to the consignor or consignee to say that he is not liable for demurrage or wharfage because the period of seven days had come to an end. S.

77(4) only reiterates the entitlement of the railways to collect either wharfage or demurrage. Union of India (UOI) Vs. West Punjab Factories Ltd.,

is a case, which arose before the amendment. Though railways Would be liable as a carrier, it is not governed by common Carriers Act. S.72 of

the old Act did not contain the words "in transit" unlike present S. 73. All that the Supreme Court held was that when the Railways were entitled to

collect wharfage, their liability would not get terminated unless the option is

exercised under S. 55 or S. 56 of the Railways Act. Beyond that, it does not help the respondent herein in any manner.

14. Having regard to the above arguments, two questions arise for our consideration. -

1. When did delivery take place? And

2. Are the Railways entitled to claim the protection of S. 77(2) of the Act?

The admitted facts are :-- 21 bales of handloom goods were booked at Karur Railway Station on 11-6-73 to Azimganj Railway Station. The

copies of invoices are Ext, A2 and A3. The consignment was addressed to self. P.W.1 speaks to the fact that a demand draft merely hundi

prepared by the plaintiff for a sum of Rs. 52,672.93 namely the value of the goods at Rs. 53,441.93 less the Railway freight of Rs. 769/- under

Ex.A4 was sent through the State Bank of India. This was accompanied by the original Railway Receipt Ex. BI, for the purpose of collection of the

amount covered under Ex.A4 from Ganesh Chandra Das of Azimganj. The collecting agent was State Bank of India at Berhambure. Normally

after honouring the hundi under Ex.A4, Ganesh Chandra Das would get title to the suit goods so as to enable him to take delivery of the suit goods

from the destination. Ex.A4 along with the railway receipt were returned to the State Bank of India to the plaintiff on 12-9-1973, along with a

covering letter Ex.A8 mentioning the reason as P.N.F. meaning payment not forthcoming. It is thereafter the plaintiff wrote a letter on 12-9-73

addressing to the Station Master, Azimganj City requesting him to re-book the suit goods to Karur. Along with that letter, he also enclosed the

original Parcel Way Bill endorsed in its favour, together with the general forwarding note duly signed to enable the Station Master to re-book the

goods to Karur. Admittedly the Station Master acknowledged the letter on 18-9-73. No reply was sent. The plaintiff sent an express reply paid

telegram on 4-10-7-3. On even date, a letter by registered post was also sent. For this there was no reply. A copy of it was sent by registered

post to the Commercial Superintendent, Eastern Railway, Calcutta. On 15-10-73, a letter was sent under Ex. A22 stating that he had sent a letter

dt. 27-9-73, that the plaintiff's letter had been forwarded to the Divisional Commercial Superintendent, Eastern Railway Howrah and Chief

Commercial Superintendent, Eastern Railway, Calcutta, and that he had not

received from the officers and the matter would be disposed of as soon as the orders were received from the Office. The plaintiff sent telegrams to the Chief Commercial Superintendent and the General Manager, Eastern Railway on 6-10-1973. On 8-10-1983 under Ex.A16 the plaintiff sent further letters by registered post to the General Manager, Calcutta and the General Manager, Southern Railway, Madras, namely defendants I and 2 the appellants before us. These facts are not in controversy.

15. As regards the delivery of the goods, we have got to look into the evidence both documentary and oral. Ex.B6 is the Railway Receipt on which delivery was effected. It is now beyond dispute that, this is a forged receipt. That shows that delivery was effected to M/s.Viswanath Dutta and Sons on 21-7-73. Because it is a forged document, much weight cannot be attached to this. However, there is Ex.B7 against which absolutely no attack was made by the plaintiff when D.W.1 was in the box. That register maintained at the railway station at Azimganj, shows that the goods were received on 1-7-73 and delivered on 21-7-73. There is also an endorsement to the effect that the railway receipt on which the delivery was given, was taken by the consignee. Therefore prima facie if we go by this document against which no attack was ever made as we said above, it would clearly establish that the delivery did take place only on 21-7-73. We are unable to accept the argument of Mr. M. Srinivasan, learned counsel for the respondent-decree-holder that because the evidence of D.W.1 had come to be disbelieved in that he was careless and negligent in delivering the goods as against a forged receipt and further he did not even take elementary care to verify whether Ex.136 was genuine or not, the railway has failed to establish the delivery on 21-7-73. Apart from the documentary evidence of which we have just now made a reference, even the oral evidence supports this. D.W.1 who is the senior booking clerk at Azimganj City Railway Station states in chief examination that the book shown to me is the unloading cum-delivery book kept in Azimganj City Railway in regular course of official duties and it is for the period from Jan. 1969 up to Sept. 1973. As it is a small station, we do not maintain two books one for unloading and another for delivery to parties separately, Ex.137 is the entry in the said book relating to suit goods. We received the said goods at our railway station on 1-7-73. The said

goods were in ""condition.

As against this, there is absolutely no evidence let in on the side of the plaintiff that delivery took place within seven days in transit. Therefore as

rightly held by the learned Subordinate Judge the goods were received at the destination station on 1-7-73 and wrong delivery was made on 21-7-

73. We are unable to see how this finding can be attacked in view of the overwhelming evidence to which we have made a reference. However,

one thing is clear in this case. The Railways had been extremely negligent or careless in making delivery of the goods. It is the evidence of D.W.2

that in respect of Railway receipt containing "to pay", three receipts are prepared, at the Forwarding station; one copy will be with the Railway

Guard along with the goods. That copy has to accompany the goods to the destination station. One copy is given to the consignor and another is

kept in the forwarding station itself. If the R. R. contains the endorsement "paid", four copies are prepared at the forwarding station. The copy of

the R. R. given to the Railway guard along with the goods is called ""guard's foil"" which accompanies the goods to the destination. It, is also

admitted by him that the guard's foil will be kept till the end of the (month and) guard's foils will be sent to the accounts section before the 7th of

every succeeding month. Therefore normally it would be expected of the railways to keep the guard's foil till the end of July 1973. That has to be

sent to the Accounts Section only on the 7th of the succeeding month, namely August 1973. If really guard's foil was there on 21-7-73 when

delivery took place then D.W.1 by a comparison of the said foil with Ex.136 would have come to the conclusion that it is a forged document. The

guard's foil is the copy of Ex. BE Even a casual comparison of Ex. BI with Ex.136 would have shown to him that Ex.136 was a forged one. It is

clear that the way bill number is printed horizontally from left to right in Ex.136 while the way bill number in Ex.131 is printed vertically. The Freight

charge in Ex.131 is Rs. 732.40 while in Ex.136 the amount is Rs. 739/-, 5% charge is mentioned as Rs. 36.60 in Ex.B1 while the same charge is

mentioned as Rs. 30/- in Ex.136. Apart from this, even the spelling of way bill is entirely different. Therefore, there is utter carelessness on the part

of D.W.I. It is somewhat surprising the Railway should have been advised to take an extreme stand that no guard-foil was given in this case. This

plea is to be stated to be rejected.

D.W. 1 admits that normally Azimganj City Railway Station is a small station. It used to receive one or two bales at a time. Therefore, when it

received 21 bales far in excess of the normal receipts at least he should have used his common sense whether the railway can deliver the goods as

against Ex.B6. There are clear instructions contained as to the delivery against such R.Rs. The instructions are as under : -

Instructions regarding prevention of delivery of goods on forged Railway receipts are being reiterated from time-to-time.

2. The following points are again notified for strict adherence by the staff : -

The existing rules regarding sending of through invoices by post should be rigidly enforced.

ii. When delivery of a valuable consignment (i.e. consignment exceeding approximately Rs. 1,000 in value) is demanded by a person not known to

the station staff, delivery should not be given until the Railway Receipt is compared with the through Invoice. If the through Invoice is not available,

the station staff should request the party to get himself identified by someone known to the station staff. If he refuses to do this, delivery should be

given only after the station master is satisfied of the bona fides of the person asking for the delivery. If necessary, an urgent telegram ""may be sent

to the sending station to get the booking particulars confirmed before delivery is effected.

iii. The Station Master should be careful in delivering the consignments which are not of a nature normally received at his station.

iv. If the Railway Receipt is lost delivery of parcels or goods should be granted to the consignee on execution of an Indemnity Note provided the

Station Master is satisfied that the person claiming the consignment is really the consignee. In all cases where the Station Master is not satisfied that

the person claiming the consignment is really the consignee the matter should be referred to the Divisional Commercial Superintendent for orders.

In no case delivery be given by the Station Master, if it is demanded by a person not known to the Station Master. Similarly no delivery on

Indemnity Note should be given for such consignments which are of nature not normally received at the station until all invoiced particulars are

properly verified and party's identity established.

- v. It should be ensured that all important documents like Railway Receipts etc., should be kept in the personal custody of a responsible official of the station nominated for this purpose; and
- vi. Delivery on Indemnity Note should not be granted without prior permission of the Divisional Commercial Superintendent in cases;
- (a) where consignments claimed by a person other than the invoiced consignee or by a person when the column of consignee on the way bill is erroneously left blank by the booking station;
- (b) consignments through booked from abroad;
- (c) consignments claimed by more than one person and
- (d) consignment booked to sender when the sender is not personally known at the destination station.

Railway receipt books on receipt from Forms Depot should be very carefully checked for any missing/defective foils. Any loss of Railway Receipt books/foils should be immediately reported to the concerned authorities. .

3. Instructions also exist vide para 1813 of Commercial Manual (Vol. II) regarding maintenance of the Inward Invoice Index Register at the stations. Unless the staff concerned at the stations/goods sheds maintain them correctly and promptly, it may not help the R.P.F./G.R.P/C.I.D. taking preventive and detecting action in cases of delivery of goods on forged Railway/Receipts.

4. It is also imperative that the Station Master/Goods Clerks/Commercial Inspectors/Accounts Inspectors who came to know of the deliveries, if any, on forged Railway Receipts should, without loss of any time report to the local Government Railway Police concerned.

The failure to follow this instruction cannot but amount to utter carelessness on the part of the Railways. It is most surprising that a senior clerk like

D.W. 1 would feign ignorance of the clear instructions. Then again at no point of time. In spite of repeated requests of the plaintiff to re-book the

goods, the Railways came with the plea that the goods has already been delivered on 21-7-1973 itself. Even Ex. A22, namely the letter received

from the Station Master of Azimganj did not mention about the delivery. That shows how careless the officers concerned in this case were. We

only mention this to uphold the finding that there has been utter lack of good faith on the part of the railways in delivering the goods. With this, we

have to leave the first point.

16. We will now refer to the important provisions of Railways Act, 1890 hereinafter referred to as the Act. Chapter VII is responsibility of railway

administration as carriers." S. 72 speaks of execution of forwarding notes in respect of animals or goods carried on railway. S. 73 catalogues the

general responsibility of a railway administration as a carrier of animals and goods. At this stage itself it is necessary for us to mention that the

railways cannot be held to be liable as a common carrier. Its liability is limited only to this section, namely S. 73 of the Act. Leaving out other

sections. We will now extract Sec. 76B because the liability of the railway was foisted by the Parliament only by this Section.

76B. Where a railway administration to which animals or goods are delivered to be carried by railway delivers them in good faith to a person who

produces the original railway receipt, the railway administration shall not be responsible on the ground that such person is not legally entitled thereto

or that the endorsement on the railway receipt is "forged or otherwise defective.

A careful reading of the above section would clearly disclose that where the goods are delivered in good faith to a person who produces the

original railway receipt the railway shall not be responsible on the ground that the person who produced the receipt is not legally entitled to the

same. Having regard to the finding of the learned Subordinate Judge himself that delivery in this case took place as against the forged railway

receipt Ex.B6 and that too without any good faith we see absolutely no scope for applying S. 76B of the Act at all. To illustrate what we have in

mind; Supposing the original railway receipt is lost, X picks it up and produces the same before the Railways for delivery. In such a case the

railways without knowing whether he had legal title to the property or not, if in good faith delivers, the railway is absolved of the liability under S.

76B. Therefore by no stretch of imagination can it be said that the railway is liable to the plaintiff under this section. Suffice it to dispose of that

finding.

17. Now we come to S. 77 on which a good deal of argument has been addressed on both sides. Therefore it is worthwhile to quote the entire

section.

77. (1) A railway administration shall be responsible as a bailee under Ss. 151,

152, and 161 of the Contract Act 1872, for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway within a period of seven days after the termination of transit;

Provided that where the goods are carried at owners risk rate, the railway administration shall not be responsible for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

(2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway arising after the expiry of the period of seven days after the termination of transit.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of the goods mentioned in the second schedule, animals and explosives and other, dangerous goods carried by railway, after the termination of transit;

(4) Nothing in the foregoing provisions of this section shall relieve the owner of animals or goods from liability to any demurrage or wharfage for so long as the animals or goods are not unloaded from the railway wagons or removed from the railway premises.

(5) For the purposes of this Chapter:

(a) unless otherwise previously determined, transit terminates on the expiry of the free time allowed (after the arrival of animals or goods at destination) for their unloading from railway wagons without payment of demurrage, and where such unloading has been completed within the free time so allowed transit terminates on the expiry of the free time allowed for the removal of the animals or goods from railway premises without payment of wharfage:

(b) ""demurrage"" and wharfage"" have the meanings respectively assigned to them in clause (d) and clause (h) of S. 46C.

The definition of ""demurrage"" and ""wharfage"" as found in clause (d) and clause (h) of S. 46C is as under :

(d) ""demurrage"" means the charge levied after the expiry of the free time allowed for loading or unloading a wagon;

(h) "wharfage" means the charge levied on goods for not removing them from the railway premises after the expiry of the free time allowed for such removal.

About this we will deal with a little later. The section which requires our attention is S. 77B. We have to find out the legal background of this

Section. By Central Act 31 of 1961, the Railways Act was amended. Originally, responsibility of railways as carriers of animals and goods was that

of a bailee. As it was desired that this liability must be changed to that of a "common carrier" the amendment was introduced. Therefore, though S.

73 of the old Act used the word "bailee" that was amended by this amending Act as a "common carrier". As a result, the burden which was originally

cast upon the claimants to prove misconduct on the part of the Railway administration has now been shifted to the administration. In such a case

therefore, it has to prove that it exercised due diligence and care in the carriage of animals or goods. It was also desired that under S. 77 of the

Act, the period of liability must be fixed as far as the railway administration was concerned as a bailee for loss, destruction, damage, deterioration

or non-delivery of goods carried by it after termination of transit. Originally S. 77(2) of the Act talked of "thirty days". By reason of the

amendment made under Central Act LXXI of 1972 that period of thirty days has been reduced to seven days.

18. As to what would be the liability of the Railways for loss after the seven days of termination of transit came up for consideration before a

Division Bench of this Court reported in *Lloyd Bituman Products (P.) Ltd. Vs. Union of India (UOI)*, , Barring the singular fact that the case dealt

with a situation obtainable before this amendment to which we have just now made a reference, namely thirty days, the ratio of that ruling squarely

applies to the facts of this case. The learned Judges, after referring to the judgments of two learned single judges of this court held : -

with respect, we may say that the ratio uniformly laid down in all the three cases referred to above sets out the position of law correctly. We have

already referred to the unambiguous terms in which sub-sec. (2) of S. 77 has been worded. The liability of the railway for a period of thirty days

from the termination of the transit being absolute, in character it stands to reason that the absolution of the liability must also be an unqualified and

unrestricted one. The appellants cannot be heard to say that the railway administration is burdened with two types of liability one as a bailee of thirty days and the other as a mere custodian of goods after the period of thirty days. The argument of the appellants' counsel that the liability of the railway administration does not cease after the period of bailment is over on the "expiry of thirty days is not based on any specific provision of law. We are not persuaded by the contention that too rigid an interpretation of S. 77(2) may even lead to the railway administration appropriating the goods for itself and refusing to deliver the same. The facts of the case do not lend support for the advancement of this extreme contention. It is not the case of the appellants, nor is there any evidence to that effect, that the missing 10 bales of Hessian cloth were actually in the custody of the railway administration on 1st Nov, 1972 and the subsequent days noted in Exhibit A19 when P.W. 1 went to Salt Cotaurs to take delivery of them and in spite of the bales being physically available for delivery the administration refused to deliver the goods in exercise of its rights under S. 77(2) of the Act.

Therefore it is clear from this case that the railway administration cannot be held responsible as a bailee or a warehouseman for such destruction; damage or deterioration or non-delivery of goods arising after the expiry of the period of seven days after termination of transit.. The learned single Judge of this court (Sengottuvelan J.) in dealing with an identical situation of delivery as against wrong receipts in CS.275/75 dt. 28-3-80 held under issues 2, 3 and 7 as follows:-

C.S.275/75 :-

The Tamilnadu Handloom Weavers Cooperative Society through its Planning Officer Mr. M. S. Ramakrishnan Plaintiff v. Union of India rep. by the General Manager, Southern Railway Madras-3 and another Defendants.

The fact that the two consignments reached Kaliyanganj Railway Station is not disputed by the plaintiff. In fact, it is seen that after obtaining the delivery of the parcel on the strength of Exs.D/2 and D/3, Babu Datta, who took delivery of the parcel again booked a portion of the same as luggage from the very same Railway Station as per entries in the luggage ticket Ex.D/4., The fact that the consignment reached Kalyaganj Station also is borne out from the guard's foil Ex.D/5. When once the consignment had

reached the destination station, the consignees are expected to take delivery of the same within 7 days of the termination of the transit and in case" of goods mentioned in the second schedule of the Railways Act, immediately after the termination of the transit. The Railway administration is liable as bailee under Ss. 151, 152 and 161 of the Contract Act only up to 7 days after the termination- of the transit and upto the termination of transit in respect of the goods mentioned in the second schedule to the Railways Act. If such delivery is not taken within the prescribed time, the Railway Administration is not in any way liable for any non-delivery of the goods as per S. 77 of the Railways Act. Inasmuch as the consignors did not approach the Station Master, Kaliyanganj till they wrote Ex.P/16 dt. 9-9-74, the Railway Administration is absolved from its liability as per S. 77 of the Railways Act. The consignment had landed at Kaliyanganj on 5-8-74. Taking the free time 48 hours as per Rule 1102 of the coaching tariff into account the transit terminates on 14-8-74 in respect of the cotton goods and on 7-8-74 in respect of ""silk goods. Since no claim for delivery was made before the termination of the transit the Railways cannot be made liable for the alleged non-delivery of the goods. Even otherwise Sec. 72(2) of the Railways Act is a complete answer to the claim of the plaintiff. A railway administration is responsible as a bailee under Ss. 151, 152 and 161 of the Contract Act for the loss, destruction, damage, deterioration or non-delivery of the goods carried by railway within a period of 30 days after the termination of transit during the 1985 Mad./N XII G" 30 relevant period, and only 7 days now by reason of a subsequent amendment of S. 77(2) of the Railways Act. I further hold that the Railway administration is absolved of its liability in respect of the non-delivery of the suit consignment as per S. 77 of the Railways Act. These two cases fully support the stand of Mr. B. T. Seshadri, learned counsel for the appellants. The contention of Mr. M. Srinivasan, learned Counsel for the respondent that S. 77(2) when it says that the Railway administration shall not be responsible in any case would mean "shall not be responsible as a bailee and that too a bailee as spoken under S. 77(1) of the Act" cannot be accepted. It is not for us while interpreting a particular section to add words to a piece of legislation when parliament in its wisdom says

"the railway is not, responsible in any case" there is absolutely no scope for us to introduce the words "'shall not be responsible as a bailee'". If that were the intention of the Parliament, nothing would have been easier to use the words "'as a bailee'". No doubt it is a cardinal rule of construction that a sub-section alone cannot be read in isolation and the entire section must be read as a whole. Even then what appears to us from a reading of the entire Section is that, sub-sec. (1) talks of liability within the period of 7 days after the termination of transit, undoubtedly such termination of transit including free time allowed depending upon the situation. During that time, the railways under Sub-sec. (1) will be liable as a bailee for loss; destruction; damage, deterioration and non-delivery. It is that situation that is contemplated under Subsec. (1). As against this, sub-sec. (2) talks of the liability after the expiry of seven days after the termination of transit. Here again free time was allowed. Therefore the railway administration's responsibility not only as a bailee, but even otherwise ceases by the operation of this sub-section. Therefore it is a totally different contingency contemplated than what was conceived under sub-sec. (1). Read in this line, we see absolutely no justification to import the words "as a bailee". Nor again are we, by this construction, forgetting the fact that sub-sec. (2) is a part of S. 77 itself. We are equally unable to accept the argument that sub-sec. (4) shall be read in the way in which Mr. M. Srinivasan, learned counsel wants to construe. Sub-sec. (4) as rightly contended by Mr. B. T. Seshadri learned counsel for the appellants merely reiterates the entitlement of the railways to collect demurrage or wharfage as defined under cl. (d) and cl. (h) of S. 46C. In other words, this talks of a situation where the goods are still available for removal. Removal of goods pre-supposes such availability. Therefore there is no inter-connection between sub-sec. (4) and sub-sec. (2) to import the words "'as a bailee'" into sub-sec. (1).

19. Now we will deal with the ruling cited on behalf of the respondent-decreeholder, namely Union of India (UOI) Vs. West Punjab Factories Ltd., . At page 401 in paragraph 17, it was stated as follows:-

We now come to the additional point raised in Ishwara Nand's suit. It is urged that Ishwara Nand's consignment had reached Morar Road

Railway station on Feb. 23, 1943 and Ishwara Nand should have taken delivery

within three days which is the period during which under the rules no wharfage is charged. The responsibility of the railway is under S. 72 of the Railways Act (No. 9 of 1890) and that responsibility cannot be cut down by an), rule. It may be that the railway may not charge wharfage for three days and it is expected that a consignee would take away the goods within three days. It is however, urged that the railway carrier and its responsibility as a carrier just come to an end within a reasonable time after the arrival of goods at the destination, and thereafter there can be no responsibility of the railway. It is further urged within three days during which the railway keeps goods with the charging wharfage should be taken as reasonable time when its responsibility as carrier ends, thereafter it has no responsibility whatsoever. Under S. 72 of the Railways Act, the responsibility of the railway or administration for the loss destruction deterioration of animals or goods delivered to the administration to be carried by railway is, subject to other provisions of the Act, that of a bailee under Ss. 151, 152 and 161 of the Contract Act (No. 8 of 1872). This responsibility in our opinion continues until terminated in accordance with Ss. 55 and 56 of the Railways Act. The railway has framed rules in this connection which lay down that unclaimed goods are kept at the railway station to which they are booked for a period of not less than one month during which time the notice prescribed under S. 56 of the Railways Act is issued if the owner of the goods or person entitled thereto is known. If delivery is not taken within this period, the unclaimed goods are sent to the unclaimed goods office where if they are not of dangerous, perishable or offensive character they are retained in the possession of the railway. Thereafter public sales by auction can be held of unclaimed goods which remain with the railway for over six months. This being the position, under the rules so far as the application of Ss. 55 and 56 is concerned it follows that even though the responsibility of the railway as a carrier may come to an end within a reasonable time after the goods have reached the destination station its responsibility as a warehouseman continues and that responsibility is also the same as that of a bailee. Reference in this connection is made to *Chapman v. Great Western Railway Co.* (1880) 5 QBD 278. In that case, what had happened was that certain goods had arrived on March 24 and 25. On the morning of March 27,

a fire accidentally broke out and the goods were consumed by the fire. The consignor then sued the railway as common carrier on the ground that the liability still subsisted when the goods were destroyed. The question in that case was whether the liability of the railways was still as common carrier, on March 27 or, was that of warehouseman. The question was of importance in English law, for a common carrier under the English law is an insurer and is liable for the loss even though not arising from any default on his part while a warehouseman was only liable where there was want of proper care. It was held that the liability as a common carrier would come to an end not immediately on the arrival of the goods at the destination but some time must elapse between the arrival of goods and its delivery. This interval, however, must be reasonable and it was held in that case that reasonable time had elapsed when the fire broke out on March 27 and, therefore, the railways responsibility was not that of a carrier but only as warehouseman. The position of law in India is slightly different from that in England, for here the railway is only a bailee in the absence of any special contract and it is only when it is proved that the railway did not take such care of the goods as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality and value as the goods bailed, that the railway's responsibility arises. A warehouseman is also a bailee and therefore, the railway will continue to be a warehouseman under the bailment even if its responsibility as a carrier after the lapse of a reasonable time after arrival of goods at the destination comes to an end. But in both cases the responsibility in India is the same, namely, that of a bailee, and negligence has to be proved. In view of the rules to which we have already referred it is clear that the railway's responsibility as a warehouseman continues even if its responsibility as a carrier comes to an end after the lapse of a reasonable time after the arrival of goods at the destination. The responsibility as a warehouseman can only come to end in the manner provided by Ss. 55 and 56 of the Railways Act and the Rules which have been framed and to which we have already referred as to the disposal of unclaimed goods. In the present case under the Rules the goods had to remain at Morar Road Railway Station for a period of one month after their arrival there and Ishwara Nand came to take delivery of them on March 10- well within that period. It may be that as he did not come within three days, he has to pay wharfage or

what is called demurrage in railway parlance, but the responsibility of the railway as a warehouseman certainly continued till March 10 when

Ishwara Nand went to take delivery of the goods. As it has been found that there had been negligence within the meaning of Ss. 151 and 152 of

the Contract Act, the railway would be liable to make good the loss caused by the fire.

First of all this was a case which arose before the amendment. Under old S. 72, the words "in transit" were absent unlike the present S. 73 of the

Act. All that their Lordships of the Supreme Court meant was that if there was an entitlement" on the part of the railways to collect wharfage or

demurrage, their obligation does not cease till the right under Ss. 55 and 56 is exercised. Beyond this, it does not help in the interpretation of S.

77(2) of the Act. For the sake of completion, now we will deal with the meaning of "non-delivery".

20. The Union of India and Others Vs. Ramchand Kishinchand and Co., Madras, was a case wherein the delivery was made against a forged

railway receipt. Our learned Brother V. Ramaswami J held that non-delivery implies, the goods are not known to have been destroyed or lost but

could not be delivered to the right person for some reason or other.

21. In Union of India and Another Vs. Jetmall Sukanraj, Ismail J, (as he then was) considered the scope of S. 77B of the Act. The learned Judge

while pointing out that "non-delivery" was not included under that section held (at P. 138) .

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 consequences of loss or destruction of the goods. For instance, the goods might have been delivered to a wrong person and therefore

there is nondelivery 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.

22. Even when it is a case of wilful delivery to a person not entitled to the goods, it was held to be non-delivery. In M & S.M.Rv.Co, Ltd. v.

Haridoss Banmali Doss ILR (1919) Mad 871: AIR 1919 Mad 140 the following passage at page 884 (of ILR 41 Mad) : (at P. 145 of AIR)

makes it clear:

The word "loss" in the English language is, in my opinion sufficiently wide to cover cases where the goods are not forthcoming either from

deliberate acts or from acts of negligence and I see no reason to confine it only to cases of the latter kind.

23. In Uttam Singh Kala Singh and Others Vs. Union of India and Others, wherein the railway servant himself committed theft, the question arose

whether it would amount to "non-delivery". No doubt that case dealt with old S. 75. The ratio would equally apply, to S. 77B as is seen from the

following passage (paragraph 17) at page 86 and page 87.

There is abundant authority for the proposition that if any article of value is lost as a result of theft by railway servants, there is a loss to the railway

within the meaning of S. 75 of the Act On a review of all the cases and the construction of Sec. 75 of Act, we are of the view that if in

respect of an article of value, the percentage charge required to be paid under Sec.75 of the Act has not been paid, the railway administration

would not be liable for the loss of the article even though the loss has been occasioned by the negligence/misconduct of its servant or by theft, even

by the very servant to whom the goods are entrusted but there would be no "loss" within the meaning of S. 75, of the Act. If the railway

administration itself as distinct from its servants, has wrongfully detained or misappropriated such articles. Therefore; even if the appellants succeed

in their contention that the theft was committed by Damodar G Pandey, the Insurance Guard, the gold would be lost to the railway administration

within the meaning of S. 75 of the Act and by reason of the non-payment of the percentage charge by the appellants, no responsibility can be

fastened upon the respondent.

Therefore, whatever may be reason for non-delivery as in this case due to carelessness or negligence on the part of the railway, we have no option

but to hold that the statutory protection of Sec. 77(2) would squarely apply to the facts of this case. This is because it is clear, only on 12-9-1973,

may be because of the supine indifference of the railway, the plaintiff was obliged to ask for re-booking of the consignment far later than the expiry

of seven days limit contemplated under Sec. 77(2) of the Act. Consequently bound by the rigours of law we have to set aside the judgment and

decree of the court below. Accordingly it is set aside and the appeal is allowed.

24. Normally we would have awarded costs in favour of the railways but for its supine indifference and carelessness to which we have made

reference earlier. Therefore we direct the parties to bear their respective costs throughout.

25. After we pronounced the judgment in open court, the learned counsel for the respondent Miss Jayasree prayed for leave to appeal to the

Supreme Court. In as much as the language of the section is unambiguous and clear, we do not think that this is a fit case to grant leave to appeal

to Supreme Court. Hence leave refused.

26. Appeal allowed.