
(1961) 03 MAD CK 0020
In the Madras High Court
Case No : Second appeal No. 387 of 1958

Union of India

APPELLANT

Vs

B.L.N. Sitaramiah and Others

RESPONDENT

Date of Decision : 10-03-1961

Acts Referred:

Limitation Act, 1963 — Article 30, 31

Citation : AIR 1962 Mad 349 : (1961) ILR (Mad) 1122 : (1961) 74 LW 418

Hon'ble Judges : Kailasam, J;Jacadisan, J

Bench : Division Bench

Judgement

Kailasam, J.

(1) The plaintiffs filed this suit against the Union of India, represented by General Managers of B. B. and C. I., G. I. P. and Southern railways for

recovery of Rs. 1453-13-6 as compensation for the damage done to six bales of cotton cloth consigned by the Surat Cotton Spinning and

Weaving Mills Ltd., to the plaintiffs. The Surat Cotton Spinning and Weaving Mills Ltd., consigned six bales of cotton cloth on 25-8-50 to the

plaintiffs. When the bales reached Madras they were found wet and thereupon delivery was taken on 21-9-1950 in the presence of fairway

Inspector who made an endorsement to the effect that all the six bales were found damaged by water on all sides. Water had penetrated far into the

bales and wetness could be felt on the gunny covering. Packing was gunny covering with brown paper packing inside. The plaintiffs took delivery

on 21-9-1950 in the expectation that the compensation of Rs. 1453-13-6 which was fixed as damages to the goods would be paid by the railway

authorities. There was correspondence between the plaintiffs and the railway company and by a letter dated 26-12-1950 the railway company

rejected the claim for compensation on the ground that the bales were not packed with water proof material and there was no misconduct on the part of the railway servant. The plaintiffs filed the suit on 19-12-1951.

(2) The trial court came to the conclusion that the packing by the mills was as per the rules of the railway and that the plaintiffs are entitled to relief

it also found that the railway was guilty of recklessness and carelessness in performance of its duty. The trial court held that the suit was within time

under Arts. 30 and 31 because the plaintiffs were entitled to the benefit of the period during which time the matter was in correspondence with the

railway company.

(3) On appeal, the Additional Judge, City Civil Court, confirmed the finding of the trial court that the bales were in sound condition and the damage

was caused owing to the carelessness and misconduct on the part of the railway servants. Against the decision of the Additional Judge, City Civil

Court, Madras, the railway company has preferred this appeal.

(4) When this appeal came up before Jagadisan J. he found that the question is one of frequent occurrence and as a substantial question of law was

Involved and as there was conflict of judicial opinion, placed it before my Lord, the Chief Justice for directions to post the case before a Division

Bench, and in pursuance of the order of my Lord, the Chief justice, this case is posted before us.

(5) Both the courts have come to the conclusion that when the goods were despatched they were properly packed and the damage was due to the

carelessness and misconduct on, the part of the railway servants. We are In complete agreement with the findings of fact and the learned counsel

for the railways did not attempt to dispute the finding. The only contention which the learned counsel raised was that the suit is barred by limitation.

(6) He contended that the goods were in a damaged condition and open delivery was given by the railway inspector to the plaintiffs on 21-9-1950,

after noting the details of damages. The plaintiffs were therefore fully aware of the loss or injury to the goods on 21-9-50. The suit was filed on 19-

12-1951, and therefore excluding the time taken for notice the suit ought to have been filed on 21-11-1951, and therefore it is out of time. The

learned counsel for the railways contended that Art. 30 provides for a suit against a carrier for compensation for losing or injuring the goods and

the period of limitation is one year from the time when the loss or injury occurs. no submits that the loss to the goods occurred before 21-9-1950,

when the plaintiffs became aware of the Injury to the goods and In any event, the period of limitation will start from 21-9-1950. We feel the

contention is sound and has to be accepted.

(7) The damaged bales were delivered to the plaintiffs on 21-9-1950. Therefore, this case, is not one of non-delivery or delay in delivery of goods

so as to attract Art. 31 of the Limitation Act but comes clearly under Art. 30 which provides for compensation for loss or injury to goods. The

learned counsel for the respondents contended that Art. 30 has to be interpreted in the light of decisions interpreting Art. 31 and that therefore the

starting point of limitation will be the date of final intimation by the railway that the goods are lost. The learned counsel submitted that when the period

of limitation is computed from the date of final intimation by the railway authorities in the case of loss of goods, the same condition may be applied

to "injury to goods" which also forms part of Art. 30. We are unable to agree with this contention. Whether the word non-delivery in Art. 31 will

include loss or not, does not help the present discussion. In this case, there is no question of non-delivery. The damaged goods were in fact

delivered to the respondents. Article 30 is the Article that provides for injury to goods and as the defendant has taken delivery of the goods it will

not amount to non-delivery and as such cannot be governed by Art. 31.

(8) The question is whether the period of limitation can be held to start from the date on which the railway company finally repudiates its claim as

has been held in the case of Art. 31. We feel that the decisions under Art. 31 have no application in a case in which the goods were damaged and

the damaged goods were taken delivery of by the consignee. The article mentions that the time begins to run from the date when the loss or injury

occurs. Reading this along, with column 1 which mentions that the suit against a carrier for compensation for losing or injuring goods should be filed

within one year, the injury referred to in column, 3 can only refer to injury to goods mentioned in Col. 1. Therefore the period of limitation will

commence from the date of injury to the goods. There may be cases in which the injury to the goods might have been caused on a particular date

but neither the railway company nor the consignee would have been aware of the

injury. The goods may be damaged in transit and by mistake sent to a wrong destination. In suit cases the railway themselves may not know when actually the goods were injured and in answer to, enquiries by the consignee the railway may be informing the consignee that the matter is under consideration. In some cases the railway may come to know that the goods were injured after considerable time and again may take, some more time in informing the consignees. In such, cases it cannot be said that the period of limitation would begin from the date when the goods were actually injured, for if it were so, If the railway company or the consignee comes to know of the damage more than, one year after the actual damage to the goods a suit by the consignee will be, barred by limitation, and we are of opinion this result would not have been contemplated by the legislature. In our view the limitation will begin to run under Art. 30 only on the date on which the consignee was informed of the injury to the goods. In this case the consignee did open delivery of the goods on 21-9-1950 and therefore he was fully aware of the damage to the goods and the limitation would in any event start running from 21-9-1950.

(9) The learned counsel for the railways referred to the decision in *Rahim Sahib v. Governor General of India* 1955 1 MLJ 406. In that case the goods were received at Tirupur railway station on 18-8-1944. and on unloading it was found that some bundles were completely wet and other bundles loose. The Claims Inspector examined the goods and Issued a certificate on 9-9-1944, and damages were claimed on 9-1-1945. The railway administration repudiated the claim on 22-1-1945. After some correspondence the final reply was sent by the Commercial Superintendent on 4-7-1945 that they maintain the repudiation for reasons already Stated in their letter of 22-1-1945. The suit was instituted on 4-7-.1944 Krishnaswami Naydu J. observes that the entire correspondence shows that the claim, was made only for damage to the goods and consequent loss and not for non-delivery and Article 30 alone would therefore apply. Regarding the starting point of limitation His Lordship found that the liability arose as early as 22-1-1945, when the railway administration originally repudiated the claim and that the administration's letter stating that the matter was under enquiry would not take away the effect of repudiation in Ex. A-4 and that the final letter of repudiation of 4-7-1945 cannot

be relied on as the date on which the limitation would start to run. We respectfully agree with the learned Judge that the Article that is applicable in the case is Article 30. But we are unable to agree with the view of the learned Judge that the starting point of limitation will be the date on which the railway administration repudiated the consignee's claim on 22-1-1945. In cases falling under Article 30, as observed by us already, the time will start, to run from the date on which the consignee became aware of the injury to the goods.

(10) The learned counsel for the appellants also referred to the decision in *East Indian Railway and Others Vs. Gopilal Sharma, J. Henderson, J.*, held that the time does not run from the date of plaintiff's knowledge and that there is ample authority for the proposition that the time begins to run from the date when the injury was actually caused and that the burden of proving when the injury was caused rests upon the carrier. Later he observed that the delivery of the goods took place on 6th August, and therefore, there cannot be any doubt that the injury took place not later than this date. We respectfully agree with the learned Judge when he observes that the burden of proving when the injury was caused, rests upon the carrier but we would qualify the learned Judge's proposition that the time begins to run from the date when the injury was actually caused by holding, that the time will begin to run from the date when the consignee became aware of the injury..

(11) The next case cited by the learned counsel for the railways is the decision in *Union of India (UOI) Vs. Gujrat Tobacco Co. and Others, J.*

Their Lordships held that under Article 30 the onus to prove date of loss or injury mentioned in column 3 of the Article is on the railway concerned.

(12) It is unnecessary to refer to the decisions of other High Courts referred to by the learned Counsel for the railways. We hold that the suit that was filed on 19-12-1951 is clearly barred by limitation under Article 30. The appeal is therefore allowed. As we have found the railway guilty of negligence we are not awarding costs. Each party will bear his own costs throughout.

(13) Appeal allowed.