
(1997) 08 PAT CK 0044
In the Patna High Court
Case No : A.F.O.O. No. 141 of 1996

Union of India

APPELLANT

Vs

Dinesh Sahu Mahadeo Dresses

RESPONDENT

Date of Decision : 18-08-1997

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (1999) ACJ 1411 : (1997) 2 PLJR 483

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : A.B. Ojha, for the Appellant;

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This appeal u/s 23(1) of the Railway Claims Tribunal Act, 1987, is directed against judgment and order of the Railway Claims Tribunal, Patna Bench, dated 17.1.1996 allowing in part the claim of the respondent to the extent of Rs. 15,000.

2. The respondent Dinesh Sahu Maha-deo Dresses, Rusera, filed application claiming compensation of Rs. 29,325 for non-delivery of one bag containing R.M. cloth. The appellant did not deny that the goods had not been delivered. It, however, denied its responsibility for non-delivery on the ground that the consignment contained excepted articles and the respondent had failed to give declaration of its value and pay the percentage charge as envisaged u/s 77-B of the Indian Railways Act, 1890 (in short "the Act"). The Tribunal held that non-delivery is distinct from loss and does not fall within the ambit of Section 77-B of the Act. The railway is responsible for non-delivery of even excepted articles even though no declaration of its value had been made and the percentage charges paid u/s 77-B. Accordingly, the respondent's claim was allowed but only to the extent of Rs. 15,000, besides interest at the rate of 12 per cent, if the decretal amount is not paid within the period of 90 days.

3. Mr. A.B. Ojha, learned Counsel for the appellant, submitted that non-delivery is the consequence of loss of the goods, therefore, every case of non-delivery is a case of loss, the provisions of Section 77-B of the Railways Act are, therefore, applicable. He relied on Union of India (UOI) Vs. Kailash Chand Jain and Company, . It may be mentioned here that the Tribunal has noticed the aforesaid case but preferred to rely on Union of India and Another Vs. Jetmall Sukanraj, and Union of India and Another Vs. K. Mansukhram and Sons, .

4. The salient feature of this case is that while the railway administration admitted that the goods were not delivered, the respondent on its part admits that the goods are scheduled as excepted goods, i.e., mentioned in the Second Schedule of the Act, with respect to which no declaration was made nor any percentage charge as contemplated in Section 77-B was paid. While the railway administration denies its liability taking the shelter of Section 77-B, the respondent's case is that the goods not having been delivered, the provisions of Section 77-B are not applicable.

5. Sub-section (1) of Section 77-B of the Act around which the controversy revolves, may be quoted at the very outset, as hereunder:

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 causes its value and contents to be declared in writing or declared them in writing at the time of the delivery of the parcel or 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.

6. In Governor General in Council Vs. Musaddi Lal, and, following that, in Union of India (UOI) Vs. Mahadeolal Prabhudayal, , it was held that failure to deliver the goods is a consequence of loss or destruction of goods, it does not give rise to an independent cause of action on which the suit may lie against the railway administration, distinct from a cause of action for the loss or destruction. These decisions, however, were rendered in the context of the provisions as they stood prior to amendments brought by Act 39 of 1961. The said Act brought a sea-change in the situation. Several erstwhile sections of the Act were repealed and replaced by new Sections 72 to 78-B. By reason of the said amendments, the responsibility of the railway was transformed from that of a bailee to that of a common carrier, i.e., insurer. Another significant amendment brought about was that while earlier the Act mentioned only three expressions, namely, "loss", "destruction" and "deterioration", the corresponding provisions after the amendment referred to two additional expressions, namely, "damage" and "nondelivery".

7. In this judgment I do not propose to refer to different provisions dealing with the responsibility of the railway administration as contained in Chapter VII of the Act. A comparative perusal of the provisions would show that while all the five expressions, namely, "loss", "destruction", "damage", "deterioration" and "nondelivery", find mention in other provisions, Section 77-B mentions only four provisions, namely, "loss", "destruction", "deterioration" and "damage". The expression "non-delivery" does not occur in that section at all. The Madras High Court in the case of Union of India and Another Vs. Jetmall Sukanraj, , after noticing the various provisions of the Chapter observed:

Prima facie, therefore, it follows that, whether the omission to include the expression "non-delivery" in Section 77-B was intentional or incidental, the result is, the compensation for nondelivery 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.

8. It is true, as contended by the counsel for the appellant, that the loss necessarily results in non-delivery. Nondelivery in my opinion may be due to other reasons as well. Loss or destruction is not the only reason of non-delivery. It would not be incorrect to say that while every case of loss or destruction necessarily results in non-delivery, every case of non-delivery may not be a consequence of loss or destruction. The goods might have been delivered to a wrong person amounting to non-delivery to the rightful person or the goods might have been appropriated by the railway administration to its own use-bona fide or otherwise. Therefore, loss or destruction cannot be understood as synonymous with nondelivery. It may be open to the railway administration to plead and establish, in a particular case, that non-delivery was the consequence of the loss so as to seek the protection envisaged u/s 77-B of the Act. In the absence of necessary pleadings and sufficient proof no such finding or conclusion can be drawn. It was in this view of the matter that the Gujarat High Court in the case of Union of India and Another Vs. K. Mansukhram and Sons, , held that where it is not proved by the railway administration that the goods in question were lost or destroyed, non-delivery thereof would be deemed to 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 of compensation.

9. Certain observations in the case of Union of India (UOI) Vs. Kailash Chand Jain and Company, , relied upon by the counsel for the appellant, do appear to be at a tangent with the decisions in the above said two cases of the Madras and Gujarat High Courts. But there is nothing in the decision which can be of any help to the appellant. It has been held in that case that Sub-section (1) of Section 77-B of the Act does not accord protection to the railway administration in every case, such as, the case where the goods have been retained by the railway administration. Because it is not open to the railway administration to withhold the parcel or package itself and yet claim exoneration from the liability, but where the railway administration itself has suffered loss, it is open to it to

plead that non-delivery was a result of the loss. The court observed, "the "loss" referred to in Sub-section (1) of Section 77-B is loss of goods, it is loss both to the consignor or the consignee, as the case may be and the railway administration. The non-delivery in such a case results directly from the loss of the goods." On facts it was held that there was evidence to show that the goods in question were lost not merely to the plaintiff but also to the railway administration. On this finding the appeal of the railway administration was allowed.

10. The appellant cannot bring its case within the purview of the above said decision of the Allahabad High Court. There is no evidence to suggest, much less to establish, that the goods in question were lost not only to the plaintiff but also to the railway administration. As stated above, loss or destruction is not the only reason of non-delivery, which may be due to other reasons as well. The appellant ought to have proved, in order to derive any advantage from the decision of the Allahabad High Court, that it had suffered loss itself. The decision, therefore, in my opinion, is of no avail to the appellant.

11. On questions of law, I find myself in agreement with the views expressed by the Madras High Court in *Union of India and Another Vs. Jetmall Sukanraj*, . The legislature by omitting the expression "non-delivery" in Section 77-B, which expression finds mention in other cognate provisions of Chapter VII, has made its intention clear. It is clear that the expressions "loss", "destruction", "damage", "deterioration" and "non-delivery" have been used as having separate and distinct meaning. It is only by giving appropriate meaning to these five expressions that the intention of the legislature can be given full effect to. Axiomatically, it is true that where the goods are lost, they cannot be delivered. But, in such a case loss must be pleaded and proved, and where any advantage is sought to be derived out of it, by reason of the provisions of Section 77-B in cases where no declaration was made by the consignor nor any percentage charge was paid, the onus would lie on the railway administration to prove the same. In the present case, the railway administration failed to discharge its onus. It cannot, therefore, deny its liability to pay the compensation to the respondent.

12. In the result, I do not find any error in the judgment and order of the Railway Claims Tribunal. This appeal is, therefore, dismissed, but without any order as to costs.