

(1984) 06 BOM CK 0008

In the Bombay High Court

Case No : Civil Revision Application No. 663 of 1980

Union of India

APPELLANT

Vs

K.T. Rizvi and Brothers

RESPONDENT

Date of Decision : 24-06-1984

Acts Referred:

Railways Act, 1890 — Section 78

Citation : (1986) 2 ACC 243 : (1986) ACJ 284 : AIR 1985 Bom 84 : (1984) MhLj 1011

Hon'ble Judges : Deshpande, J

Bench : Single Bench

Advocate : K.A. Ghatpande, for the Appellant; R.N. Mohta, for the Respondent

Judgement

1. This revision application by the Union of India is directed against the decree for Rs. 528.70 passed against it.

2. The non- applicant-plaintiff, who was the consignee and the owner of the goods, i.e., 51 bundles of rope, booked from Nagarcoil on April 29, 1978, for delivery at Akola, received the goods on 15-7 -1978. At the time of the delivery, a part of the goods in 15 bundles was found to be damaged, and the damage was assessed. According to the non- applicant, the loss and deterioration was due to the gross negligence and misconduct of the Railway administration and their servants. A notice under S. 80 of the Civil P.C. was sent on 31-12-1978 to the applicant. As no amends were made, the suit came to be instituted. One of the contention of the applicant was that notice under S.. 78-B of the Railways Act, 1890 had not been served on it within six months, as required, and the claim was not maintainable.

3. The learned trial Judge took the view that as the delivery was effected on 15-7-1978 and the notice was sent on 31-12-1978, the claim was made within time, as required under S. 78B of the Railways Act. He, therefore, decreed the claim for Rs. 528.70.

4. In this revision application, it is contended on behalf of the applicant that the learned trial Judge was in error in taking the date of the delivery of the consignment as the basis for computing the limitation prescribed under S. 78B of the Railways Act, when the section provides that the claim should be preferred within six months from the date of delivery of the animals or goods for carriage by railway. If the words employed in this section are taken as the basis for calculating the period of limitation, the claim under the notice dt. 31-12-1978 was made more than two months after the expiry of the period of six months from 29-4-1978 when the consignment was booked, and was beyond time.

5. On behalf of the non- applicant, reliance was placed on the view taken by a learned single Judge of this Court in Civil Revn. Appln. No. 123 of 1969, decided on Oct. 4, 1973 *Union of India v. Cutpiece Wala*. The learned Judge there observed that though the construction sought to be placed by the Railways Administration on S.78B for taking the starting point of limitation as the date of delivery of the animals or goods at the point when they were so handed over to the railways for carriage was available, there were some inherent difficulties involved. In the view of the learned Judge, it was plain that if the words of the statute "within six months from the date of delivery of the animals or goods for carriage by railway" were construed in the light of the entire scheme of S. 78B, it was a provision for the purpose of notification of claims for refunds of over-charges and/or to seek compensation for losses, and such claims could be made only when the person entitled could have knowledge about it at the stage when the delivery is effective and not before. He was apprehensive that though in a given case the transit, itself, covered a period of six months or more, the remedy would be lost if the period of six months were to be reckoned from the date of booking. The learned Judge also took into consideration the proviso to S. 78B and observed that it used the words " within the said period of six months" regarding the non-delivery or delay in delivery of the animals or the goods with particulars. The question of non- delivery would not arise "unless the destination is reached, or the consignee confirms himself with the place of destination." In the learned Judges view, therefore, the limitation would begin to run from the date of delivery of the consignment.

6. Section 78-B runs as follows;--

" A person shall not be entitled to a refund of an over-charge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf-

(a) to the railway administration to which the animals or goods were delivered to be carried by railways; or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred,

within six months from the date of the delivery of the animals or goods for carriage by railway."

It is not necessary at this stage to refer to the proviso. It is important to note that both the terms "railway" and "railway administration" have been defined under the Act. Under S. 3(4) : Unless there is something repugnant in the subject or context, " railway" means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes - (a) all lines of rails, sidings or branches worked over indicating the limits of the land appurtenant to a railway; (b) all kinds of rails, sidings or branches worked over for the purposes of, or in connection with, a railway; (c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purpose of, or in connection with, a railway; and (d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway ; "railway administration" or "administration", in the case of a railway administered by the Government means the manager of the railway and includes the Government, and, in the case of a railway administered by a railway company, means the railway company. The provisions of S. 78B would have to be understood in the light of the definitions of the two expressions "railway" and "railway administration" given in the Act. When the section refers to preferring in writing the claim by a person or on his behalf, it refers to the railway administration to which the animals or goods were delivered to be carried by railway, or to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred. While referring to the period of limitation during which the claim has to be preferred, the section does not refer to the railway administration but provides for the computation of the period from the date of the delivery of the animals or goods for carriage by railway. In view of the meanings ascribed to these two expressions under the Act, it is difficult to construe S.78B as meaning "delivery of the animals or goods for carriage by the railways administration". It does not refer to the railways administration while prescribing the period of limitation but only to the mode of carriage, namely, carriage by railway. It is, therefore, difficult to agree with the learned Judge's view in the Union of India v. M/s Cutpiece Wala when he regarded the words "carriage by railway" as merely qualifying the word "animals or the goods", because the learned Judge has not considered the different meanings given by the Act to the two expressions "railway" and "railway administration" while reaching that conclusion.

7. On behalf of the non-applicant, reliance was placed on the observations in AIR 1955 Ass 221 (Amarchand Pannalal v. Union of India, where a Division Bench of Assam High Court, while construing S. 77 of the Railways Act, 1890, which corresponds to S.78B as it stands after the amendment, observed that the words "for carriage by railway" may be read as qualifying the term the term "goods" only, and not the date of delivery of the goods. In the view of the learned Judges, it was more reasonable to hold that the period of limitation should be

counted from the day when the goods were to be delivered or delivered to the consignee or his representative, and not from the date when the goods were originally consigned. The learned Judges relied on the observations in AIR 1927 478 (Oudh) , but a careful reading of that decision would show that the learned Judges were not satisfied that any notice was necessary under the provisions of S. 77 and, secondly, if such a notice were required, the letter of the 16th July, 1923, in their opinion, was an absolutely sufficient notice. The observations of the learned Judges of the Oudh Chief Court, on which the learned Judges of the Assam High Court in the aforementioned ruling relied, related to the provisions of the Limitation Act - Art. 31, under which time runs from the date when the goods ought to be delivered. There is, therefore, nothing in the observations in AIR 1927 478 (Oudh) which lends support to the view taken by the learned Judges of the Assam High Court in AIR 1955 Ass 221.

8. Reliance was placed on the observations in *Niranjanlal Agarwalla Vs. Union of India (UOI)*, for urging that the provisions of S. 77 of the Railways Act should receive a liberal construction. There is nothing, however in the observations of their Lordships which would have any bearing on the question of limitation which falls to be considered here. The argument was that there would be a hardship to the person claiming compensation from the railways in the event of the whole of the time being occupied in transit, if the limitation of six months were to be reckoned as from the date when the goods were delivered to the railway administration for carriage. The proviso to that section, however, mitigates any possible hardship, because, under it, any information demanded or inquiry made in writing to, any of the railway administration by or on behalf of the person within the said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identify the consignment of such animals or goods shall, for the purposes of the section, be deemed to be a claim to the refund or compensation. The view of the learned single Judge of this Court, therefore, that construing the section in the manner in which the railway administration wanted it to be construed, would create difficulties, does not seem to be, with respect, correct. In *Union of India (UOI) Vs. Asharfi Devi and Others*, it was held that the date from which the period of six months has to be computed under S. 77 is the date on which the goods were delivered to the railway-company for carriage. In *Managing Agents (Martin and Co.) Vs. Seth Deokinandan and Another*, another Division Bench of that Court also took the view that where the consignment was delivered for carriage on 7-9-1947 and the notice of claim under S. 77 for loss was sent more than 6 months later, the claim for compensation in so far as it related to the goods destroyed by floods and the deterioration of goods was untenable. In AIR 1968 Ker 23 *Union of India v. Laxmi Textiles*, the interpretation, that the words "for carriage by railway" qualify the word "goods" and not "the date of delivery of the goods", was held opposed to the plain grammatical meaning of the clause as S. 78B uses the words "delivery for carriage" in more than one place and have to be read and understood consistently and not differently. The learned Judges of the

Kerala High Court did not accept the view taken in AIR 1955 Ass 221.

9. In Union of India (UOI) Vs. Firm Ramdas Amritlal Pali, the learned Judges, while recording their dissent with the view taken by the Assam High Court AIR 1955 Ass 221 , held that the notice contemplated under S. 77 should be given within six months from the date of delivery of the goods for carriage by railway, and not within six months from the date of delivery of the consignment. The same view was taken by the Patna High Court in Union of India(UOI) Vs. Nirmal Kumar Promode Kumar, With utmost respect I find it difficult, both on principle and authority, to agree with the view taken by the learned single Judge in Civil Revn. Appln. No. 123 of 1969 Union of India v. M/s. Cutpiece Walla. It was urged by the learned Advocate for the applicant that the view taken by the learned single Judge of this Court is not in conformity with the proposition laid down in Governor General in Council Vs. Musaddi Lal, where their Lordships observed in para-3 as follows ;--

"Section 77 manifestly prescribes a condition precedent to the maintainability of a claim for compensation for goods lost, destroyed or deteriorated while in the custody of the railway administration. The notice prescribed was not served by the respondent upon the railway administration within six months from the date on which the goods were delivered for carriage, and prima facie the suit would be barred for non-compliance of a statutory condition precedent."

10. It is apparent from the judgment in Civil Revn. Appln. No. 123 of 1969 Union of India v. M/s. Cutpiece Wala that the above observations of their Lordships of the Supreme Court were not brought to the notice of the learned Judge, and the opponent was not entitled to succeed on the basis of the observations in Civil Revn.. Appln. No. 123 of 1969. Notice under S. 78B of the Railways Act must be served within six months from the date on which the goods were delivered for carriage and starting point of limitation cannot be from the date the goods are delivered to the consignee. The notice in the present case was, therefore, bad and the decree passed by the trial Court has to be set aside.

11. In the result, the revision application is allowed. The decree passed by the trial Court is aside and the suit is dismissed. There will be no order as to the costs throughout.

12. Petition allowed.