
(1991) 06 KAR CK 0010
In the Karnataka High Court
Case No : Regular First Appeal No. 49 of 1981

Union of India

APPELLANT

Vs

M/s. Sattur Nataraja Traders

RESPONDENT

Date of Decision : 13-06-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Contract Act, 1872 — Section 151, 152, 161, 162
Partnership Act, 1932 — Section 69 (2)
Railways Act, 1890 — Section 77, 77 (2)

Citation : (1993) ACJ 877 : AIR 1992 Kar 301 : (1992) ILR (Kar) 392

Hon'ble Judges : Murlidher Rao, J;K.A. Seami, J

Bench : Division Bench

Advocate : S.V. Jagannath, for the Appellant; V.S. Sadasivan, for the Respondent

Judgement

Swami, J.—This appeal is preferred by the defendant against the judgment and decree dated 30th September 1980 passed by the learned IV Additional Civil Judge, Bangalore in O.S. No. 673/1977.

2. The respondent is the plaintiff. The respondent/plaintiff is a firm. It filed the aforesaid suit for recovery of a sum of Rs. 20,414/- with court costs and current interest from the defendant/ railway being the value of the consignment -- 346 bundles of safety matches entrusted to the defendant on 17-7-1974 under Ex.D1 to be delivered at Kankaria; that according to the case of the plaintiff the goods were not delivered nor the arrival of the goods at Kankaria was notified; that the goods caught fire on 24-9-1974; that due care and caution was not taken by the railway in keeping the goods therefore, the railway administration was responsible for payment of the value of the goods amounting to Rs. 20,414/-. Before filing the suit a notice as required by law was also issued. The suit was filed on 17-9-1977.

3. The defendant contested the suit on various grounds and inter alia contended that requisite care and caution was taken by the railway administration; that the

plaintiff failed to take delivery of the goods even though it took delivery of the other two consignments which were sent along with the consignment in question in the same wagon booked on the same day; that the plaintiff took delivery of the other two consignments on 7-8-1974 but failed to take delivery of the consignment in question on that day; that the claim of the plaintiff was barred by time having regard to the provisions contained in sub-sec. (2) of S.77 of the Indian Railways Act, 1890.

4. In the light of these contentions, the trial Court framed the following issues:

"1. Whether Sattur Nataraja Traders (Plaintiff) is registered with the Registrar of Firms?

2. Whether Arulmoli Rajan is a Partner of the said firm?

3. Whether the suit is or is not maintainable under S. 69(2), Partnership Act?

4. Whether the defendant proves that the railway had taken due care and caution over the consignment during transit?

5. Whether the consignment was damaged for reason beyond the control of railway administration?

6. Whether the railway is not liable for reason under S. 77(2) Railway Act?

7. Whether the loss or damage is referable to negligence of misconduct on the part of railway?

8. Whether the amount claimed in the plaint is not due to the plaintiff towards the loss of consignment?

9. Whether the plaintiff proves the service of valid notice under S. 78B, Railway Act?

10. Whether the plaintiff proves service of valid notice under S. 80, C.P.C.?

11. What decree or order?"

5. The plaintiff in support of its case examined two witnesses including one of its partners as P.W. 1 and also one Mr. Meenappan as P.W. 2 who was the Manager in the plaintiff firm. The plaintiff also produced five documents which were marked as Exs.P1 to P5. The defendant examined two witnesses as D.W. 1 and D.W. 2. D.W. 1 was the Fire Inspector and D.W. 2 was the Senior Goods Clerk, Commercial Branch. It also produced 9 documents which were marked as Exs. D1 to D9.

6. On the basis of the oral and documentary evidence on record, the trial Court answered Issues 1 to 4 and 7 to 10 in the Affirmative and answered Issues 5 and 6 in the Negative. Accordingly, it decreed the suit as prayed for.

7. In this appeal, Sri Jaganath, learned Central Government Pleader appearing for the appellant contends that the finding recorded by the trial Court that there

was negligence on the part of the Railway administration in maintaining the goods in question is not justified because the goods were kept in the godown under the lock and key; that at any rate the plaintiff was aware of the arrival of the goods and it took delivery of the other two consignments on 7-8-1974 and purposely failed to take delivery of the consignment in question, therefore, there was no question of issuing any notice; that even otherwise, the trial Court is not right in holding that a notice was necessary in view of the fact that the railway administration before it purported to take action under S. 56 of the Act, the goods caught fire and were destroyed; that at any rate, having regard to the fact that the goods arrived at Kankaria on 6-8-1974 at about 4.45 p.m. and thereafter the transit time stood terminated on the expiry of three days from the date of arrival of the goods at Karnataka, and the destruction of the goods by fire took place on 24-9-1974, long after the expiry of the period prescribed under S. 77 of the Act; therefore, the Railways were not liable as the liability of the Railways had come to an end even before 24-9-1974, therefore, the trial Court is not justified in decreeing the claim made by the plaintiff. It is also contended that Ss. 73 and 77 of the Act are to be read together and the period of liability of the Railway administration prescribed under S. 77 of the Act also covers the liability of the Railway administration under S. 73 of the Act. Therefore, it is the contention of the learned Central Government Pleader that -on this ground also the decree of the trial Court is not sustainable.

8. On the contrary it is contended by Sri Sadasivan, learned counsel appearing for the respondent/plaintiff that the goods were entrusted under the railways" risk. The fact that the goods arrived at Kankaria on 6-8-1974 and the plaintiff took delivery of the other two consignments did not in any way absolve the railway administration from its liability as a bailee; that the liability of the railway as a carrier might have come to an end on the expiry of the period mentioned in S. 77 of the Act, but, nevertheless, its liability as a bailee continued as long as the goods were not taken delivery of and no notice was issued to the plaintiff to take delivery of the goods. The learned counsel placed reliance on Ss. 55 and 56 of the Act and contended that Ss. 73 and 77 of the Act are to be read subject to the provisions of Ss. 55 and 56 of the Act, as otherwise, it is contended by the learned counsel, the very purpose and the object of making the railway as a bailee will be frustrated, hence, it is contended that in the absence of notice issued by the defendant and also in the absence of due care and caution, taken by the defendant for keeping the goods in safe custody, the trial Court is justified in passing the decree as prayed for.

9. In the light of these contentious, the following points arise for consideration :

1. Whether the loss or destruction of the goods in question was due to negligence and failure to use reasonable foresight and care by the Railway administration?
2. Whether the liability of the railway administration either as a carrier of goods or as a warehouse-keeper extended up to 24-9-1974?

3. Whether the period of responsibility prescribed under S. 77(2) of the Act governs the claim arising under S. 73 of the Act also?

10. Before we take up point No. 1 for consideration, it is relevant to notice the undisputed facts of the case. The plaintiff entrusted on 17-7-1974 three consignments to the defendant -- Railway Administration at Bangalore -- to be carried to and delivered at Kankaria. The invoices relating to the three consignments were invoice Nos. 2, 3 and 4. All the three consignments were sent in one wagon only. Of course, the Invoice Nos. 2 and 3 are not produced in the case, because, the plaintiff took delivery of the goods sent under Invoice No. 4 which is marked as Ex. D1 and the forwarding note as Ex.D2. The goods were lying for sometime on the platform and thereafter they were kept in the old godown. The goods were ultimately destroyed due to fire on 24-9-1974. It is also not in dispute that between the period 6-5-1974 to 24-9-1974 the plaintiff did not make any attempt to take delivery of the goods. The consignee of the goods was consignor only as they were sent under self.

11. Point No. 1:-- The trial Court has held that there was negligence on the part of the railway administration in maintaining the goods. In this regard the evidence was adduced by the railway administration because the burden was upon the railway administration to prove that it has used foresight and care in respect of the carriage of the goods in question. Therefore, it examined D.W. 1. and also marked the report made by the Railway Protection Force. Ex.D9 shows that the goods were received on 6-8-1974 and were lying undelivered and the Wagon No.75182 C/w. Invoice No.4 was clubbed with invoice No. 2 and 3 of 17-7-1974. The goods pertaining to invoice No. 4 were not taken delivery by the consignee. They were lying undelivered. They were shifted to "old goods shed KKF". The goods were burnt totally on 24-9-1974. Freight charges of Rs.444/- had been paid. Ex.D.8 is the fire report made by the Railway Protection Force. It is dated 25-9-1974. The said report reads thus :

SPECIAL REPORT CASE

FORM NO. RPF/F--9

WESTERN RAILWAY

LOSS about

Rs.2,00,000/-

(two lakhs)

RAILWAY PROTECTION FORCE (FIRE SERVICE)

FIRE, REPORT

Division: BRC

Fire Report No. FS/KKF/15/6/74

Station : Kankaria

Date of Incident; 24-9-1974

Officer-in-charge at Fire SIPF/F/HS. Maktyani.

I. CALL

Called by :

R.K. Ramlal

Telephone No.

Vertical.

Address of the premises involved :

Old goods shed KKF

Occupier's name :

W. Railway

Time of Call :

21-30 time of first turn-out 21-32 Hrs.

Time of arrival at incident : .

21-37 hrs

Distance from station to incident :

2 K.Ms.

2. Particulars of fire

Description of property involved, industry :

600 cases of fire works, 147 bundles of match boxes

Type of construction, area, etc., No. 1274 in wagon No.....

Category of Fire : Serious.

Extent of fire : 30" x 20" x 40" and 9" x 20" x 6"

Supposed cause of fire : Under Police Investigation.

Description of damage : Fire Works cases Match box bundles and 28 bundles.

Estimated value of

(i) Properly involved : Approximate Rs. 3,00,000/-

(ii) Surrounding risk, if any : 5 Loaded wagons,

(iii) Damage to premises : Above Rs. 2,00,000/-

(iv) Damage to contents : Above two lakhs.

Name of the last Officer to

leave the fire :

H. S. Maktyani SIPF(F)

Time and date fire extinguished.

00-15 hrs on 25-9-1974,

Total time employed

: 3 hours -- Minutes.

2(A) Particulars of extinguishing media

Media employed for extinguishing fire : cooling.

Gears and appliances used : Fire Engine branch pipes etc.,

Source of water supply : City Fire Brigade tanker.

3. Persons escaped/Rescued.

Nil.

4. Casualties.

Nil.

5. Attendance at Occurrence.

Name of Fire Station:

: Kankaria.

Type of appliance

: SPP.

Registration No.

: GT--12995

Time of turn out :

: 21--32

Time of arrival at incident:

: 21--37

Time of leaving incident:

: 00--30

Time of return back to home station :

: 00--32

Trip Mileage:

: 7 K. Ms.

Pumping hours.

: ____

6. F.S. Personnel in attendance.

(Relief Personnel not to be included).

Officers.

Personnel.

Rank.

Name.

Rank.

Number.

Name.

SIPF(F)

H.S. Maktyani

HPK (D)

ME/7279

Ram Saran

HRK(F)

ME/6028

Hublal

RK (F)

E/ 19265

Chanderpal Singh.

-do-

E/19458

Bhaskar.

-do-

RE/2233

Kualeshwarpal.

-do-

BR(E)/1826

Harishchander.

Off duty."

HRK(E)E/20490

Shardagal.

RK(F) E/20036

Nilkant.

-do- bre/1898

K.M. Rai.

7. Any other remarks :

R. K. (Protection) KKF Shri Ramlal attended fire Station at 21-30 hrs. on cycle and informed fire in Old Goods Shed. RK(F) Chander Pal Singh informed the undersigned on telephone at residence at 21-31 hrs. Fire Engine turned out at 21-32 hrs. undersigned arrived at spot at 21-30 hrs. and Fire engine arrived at 21-37 after breaking the lock of gate. H.Q. Dairpewy City. Fire Brigade attended and after that Main Nagar and Panchikhim, Fire Engines attended. Chief Fire Officer -- Shri Baricha also attended. 3 jets of City Fire Engineer and one of Railway Fire Brigade operating water from Sarangpur. Textile mill was obtained by Railway Fire Service with 14-Dhosh line. Fire was of serious nature. Fire works (crackers) cases and safety match box bundles, 5 loaded wagon were pulled away out of which wagon No. WR37418 was involved due to extreme heat, Senior goods clerk Shri Shiv Prasad Jani was there. At 21-55 the said wagon caught fire which was pulled towards south for safety which was attended and C.P. goods bales got unloaded (wagon was riverted, E.P., locks and sealed which were removed with TXR's staff help, Fire brought under control at 23-10 hrs. and completely extinguished at 00-15 hrs. on 25-9-1974. Stand by duty of 3 RK(F) with D. Hose line ready was kept and self with fire engine (not clear) returned into station at 00-32 hrs. City Fire Brigade (about 13 vehicles) left at 00-15 hrs. on 25-9-1974, loss above Rs.2,00,000/- (Two lakhs). No injury to Rly employees, S.M., T. PF, ASPF, yard staff, KKF also attended the spot. City and G.R.P. staff also attended. Further report will follow please. Goods-shed building also badly damaged.

Sd/- HPF (F) FS/KKF/15/74. Date: 25-9-1974. " 12. Ex. D7 is the statement of Shri Prasad Jani recorded by the Assistant Commercial Superintendent Western Railway, Church-gate, Bombay on 30-9-1974. Ex. D6 is the recommendation made by the Assistant Commercial Superintendent, Western Railway for taking

certain precautions in future. The recommendations made by the Assistant Commercial Superintendent goes to show that those things were not existing at the time when the fire took place. It is very relevant to notice para-1 of the recommendation.

"since storing of crackers is a normal occurrence during the season and the same is stored along with matches, a reference be made to the Inspector of Explosives for his opinion whether there can be any hazard of fire by storing these items together. Also the precautions to be taken and the storage conditions to be observed in case of storage of bulk consignments of crackers and matches may also be ascertained from him with reference to the Red Tariff."

He also further recommended that "it is desirable that a duplicate key of the lock on the main-gate of the old and new goods sheds be kept in a wooden box duly sealed at the fire station to avoid delay and loss which result when the fire brigade authorities have to break open these locks to enter the goods shed to attend fires during the night after close of goods shed." He also further recommended that "the old goods-shed has been in regular use for oily and dangerous goods, immediate action is called for on the need for providing fire fighting equipment as asked for by Dy. CSO-CCG in his letter No. FSG/66/KKF dated 11-2-1974)." The other evidence on record which has been referred to by the learned Trial Judge in paras 22 and 23 of the Judgment would also go to show that there was no proper care taken which was required to be taken by the railway administration in order to safeguard the consignment. The Trial Court has with reference to the evidence, held thus:

" "It is to be noted that the defendant as not examined any other witness except D.W.1. Ex. D-3(b) is the statement of D.W. 1 before the Enquiry Committee which mentions that in the initial stage when he arrived at the site of fire the intensity of fire was grave and it was not possible to go near the shed which was involved in fire. The shed was also locked. After fire was controlled and doors and windows burnt, he entered the shed. At that time as per his observations the stocking arrangements were that; small room used as office-cum-store room cases of fire works were stocked on west side and some on east side. The witness has also stated he suspected sabotage and he has also given a memo in that regard. He has admitted that in his report Ex. D-4 he has not stated that there were two partition walls and that the crackers and safety matches were stored separately. According to the witness the matches and crackers were stored in two different rooms in the same godown with a galvanised sheet partition. He cannot give a definite answer why there was fire in the godown. He has also stated the godown was provided with a buckets and 2 drums which measure was insufficient. There is no provision in the railway yard for supply of water in the godown. The consignment was kept in the old goods-shed. He has admitted that he recommended to the higher authorities that inflammable and dangerous goods should not be stocked in the old godown. He has admitted that Ex. D-6 is the recommendation sent. In para-2 of Ex. D-6 it is stated as old

godown has been in regular use for oily and dangerous goods, immediate action is called for and the need for providing fire fighting equipments. It is also desirable that a duplicate key of the lock of the main gate and the old and new goods shed be kept in a wooden box duly sealed to void delay in loss. He has stated that the consignment of matches was not stocked along with the crackers. On 24-9-1974 he went to the godown in the morning and noticed large quantities of matches and crackers were stored in the godown. He told before the Enquiry committee that he suspected sabotage for the fire accident. After extinguishing of the fire when he went inside the godown he found it was not subotage. The fire was extinguished on 25-9-1974 at 12A-M. The matches stored were in closed godown room where SPM Jolly was not provided. He has stated that he does not agree with the statement of Shiva Prasad Jony that there were 7 buckets and 4 drums in the goods shed and they were empty and were unservicable and no action was taken to get them replaced. He has admitted that on several times he suggested that the goods like crackers and matches and other combustible goods to be stored in this gociown, the hydrants should be reconnected from Ahmedabad tank, the authorities did not take action. He has not stated in his report Ex. D-8 the cause for fire. He cannot give any reason for the fire accident. Thus it is seen the evidence of D.W. 1 shows that he went to the spot after the accident and he is not in a position to give the cause for fire. It is also seen from his evidence there was no proper equipments of buckets and drums filled with sand and water to fight with fire. Bare requirements were made available and it is also seen from Ex. D-6 recommendation has been made for equipping the goods shed with more facilities in case of fire accidents. Excepting D.W. 1 no other official has been examined by the defendant-railways. The counsel for the defendant submitted that all possible care had been taken and the fire accident was beyond the control of the railways. The counsel for the defendant has invited my attention to Fushraj Thanmull Vs. Union of India (UOI), wherein it is held : wagon catching fire Neither railway authorities nor their servants responsible for fire - Origin of fire not attributable to any fault on the part of railway -- Railway servants immediately isolating wagon and fighting with lire with extinguishers and buckets of water Salvage of goods not possible Railway authorities held were not negligent."

Ultimately, he has recorded a finding that the railway administration was negligent. On going through the evidence on record, we arc of the view that there is no reason to differ from the view expressed by the Trial Court. The godown was a very old one and the consignment in question which consisted of match boxes were put in one shed and there was no fire extinguished arrangement inasmuch as the old buckets were kept which were empty and there was no sand in the shed. Therefore, this evidence in the light of the recommendations made as per Ex. D6 by the Assistant Commercial Superintendent. West Railways clearly establishes that the railway administration was negligent and it had not used reasonable foresight and had not taken adequate measures and the care which it was bound to take as a man of

ordinary prudence would under similar circumstances take of his own goods of the same bulk and quantity and the value. Therefore, we answer Point No. 1 in the affirmative.

13. Points Nos. 2 and 3:-- These two points are inter-connected, therefore, they are taken up together for consideration. We have already pointed out that the consignments sent under the three invoices arrived at Kankaria on 6-8-1974 at about 4-45 p.m. The consignments relating to all the three invoices were sent together in one wagon. All the three consignments were to be delivered to the plaintiff only, at Kankaria. The plaintiff took delivery of two consignments on 7-8-1974. However, he did not take delivery of the consignment pertaining to invoice No. 4. When the plaintiff took delivery of the consignments sent under invoice Nos. 2 and 3 and all the consignments relating to three invoices were sent together in one wagon, it can be safely inferred that the plaintiff was fully aware of the arrival of the consignment sent under invoice No. 4 at Kankaria on 6-8-1974 at about 4-45 P.M. But this fact by itself will not be sufficient to hold that the plaintiff, having failed to take delivery of the goods, even though he was aware of the fact that the goods had arrived at Kankaria on 6-8-1974, is not entitled to the relief sought for by him in the plaint. In the light of the provisions contained in the Act to which we will hereafter advert to, the fact that the plaintiff was aware of the arrival of goods at Kankaria is of no material consequence. Chapter VII of the Act deals with the responsibility of the Railway Administration as a Carrier. It may be mentioned at the outset that the provisions of the Act have been amended from time to time. The provisions of the Act as they stood prior to 1-1-1962, the date on which the Amendment Act 39/61 came into force were quite different. The amendment Act 39/61 had brought about many changes in the Act. The responsibility of the Railway Administration as bailee of the goods received by it for transporting was changed to that of a common carrier. At the same time, extensive provisions were also made by the amendment Act 39-61 to relieve the railway administration of its basic liability as a common carrier. Section 72 of the Act, as it stood prior to 1-1-1962, was replaced by Sections 73 and 77 of the Act by the Amendment Act 39/61. Section 72 of the Act, as it stood prior to coming into force of the Amendment Act 56 of 1949 was as follows :

"S. 72 : Measure of the general responsibility of a railway administration as a carrier of animals or goods. (1) The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee u/s 151, 152 and 161 of the Indian Contract Act, 1872.

(2) An agreement purporting to limit that responsibility shall, in so far as it purports to effect such limitation, be void, unless it-- (a) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and (b) is otherwise in a form approved by the Central

Government.

(3) Nothing in the common law of England or in the Carriers Act, 1865, regarding the responsibility of common carriers with respect to the carriage of animals or goods shall affect the responsibility as in this section defined of a railway administration.

Therefore under sub-section (2) of Section 72, as it stood prior to Act 56/49, it was open to the railway administration to limit its responsibility by a special agreement in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods and was otherwise in a form approved by the Central Government. The aforesaid sub-section (2) of Section 72 of the Act was omitted by Act No. 56/49. Thus, Section 72 as it stood prior to 1-1-1962 without sub-section (2) thereof came to be replaced by Section 73 and also Section 77 of the Act, by the Amendment Act 39/61.

Sections 73 and 77 of the Act, as they stand today, and on and from 1-1-1962 and as they stood on the date of destruction of the consignment in question are as follows:

"S.73.-- General responsibility of a railway administration as a carrier of animals and good.-- Save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction, damage, deterioration or non-delivery in transit, of animals or goods delivered to the administration to be carried by railway, arising from any cause except the following, namely :--

- (a) act of God;
- (b) act of war;
- (c) act of public enemies;
- (d) arrest, restraint or seizure under legal process;
- (e) orders or restrictions imposed by the Central Government or a State Government or by any officer or authority subordinate to the Central Government or a State Government or a State Government authorised in this behalf;
- (f) act or omission or negligence of the consignor or the consignee or the agent or servant of the consignor or the consignees;
- (g) natural deterioration or wastage in bulk or weight due to inherent defect, quality of vice of the goods;
- (h) latent defects;
- (i) fire, explosion or any unforeseen risk;

Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss,

destruction, damages, deterioration or non-delivery unless the administration further proves that it has used reasonable foresight and care in the carriage of the animals or goods."

"S. 77 : Responsibility of a railway administration after termination of transit.--

(1) A railway administration shall be responsible as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 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 owner's risk rate, the railway administration shall not be responsible for such loss, destruction, damage, deterioration or nondelivery 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 Section 46C."

14. A comparison of old Section 72 as it stood prior to 1-1-1962 and Sections 73 and 77 of the Act as they stand now make it clear that old Section 72 has been replaced by present Sections 73 and 77. Further the responsibility of the railway administration as a bailee under Sections 151, 152 and 162 of the Indian Contract Act, 1872, for the loss, destruction or deterioration or non-delivery of the goods carried by the railway has been limited to the period of seven days

after the termination of transit.

14.1. It may be pointed out here that prior to Act 71/72, Sub-sections (1) and (2) of Section 77 limited the period of responsibility of railway administration to 30 days after the termination of transit. However, Act No. 71/72 reduced this period to 7 days. In the case of goods falling under sub-section (3) of Section 77 of the Act, the responsibility of the railway administration for the loss, destruction, damage, deterioration or non-delivery of the goods comes to an end on the termination of transit. Thus, the responsibility of the railway for the loss, destruction, damage, deterioration or non-delivery of the goods and animals coming under sub-section (3) of Section 77 of the Act has been limited to a shorter period, in that, it comes to an end on the termination of transit. The responsibility of the railway administration u/s 77 of the Act commences from the time the goods arrive at the delivery point and continues till the expiry of seven days after the termination of transit, if the case falls under sub-section (1) or sub-section (2) of Section 77 of the Act. Sub-section (3) of Section 77 deals with the responsibility of the railway administration in respect of loss, destruction, damage, deterioration or non-delivery of the goods mentioned in Second Schedule to the Act and also of the animals and explosive and other dangerous goods carried by railway. Responsibility arising under sub-section (3) of Section 77 of the Act commences from the time of arrival of the goods at the destination point and comes to an end on the termination of transit. As per sub-section (5) of Section 77, transit, termination on the expiry of free time allowed after the arrival of the animals or goods at destination for their unloading from railway wagons without payment of demurrage. It also further provides that even where such unloading has been completed within the free time, the transit terminates on the expiry of free time allowed for the removal of the animals or goods from the railway premises without any payment of wharfage. Clause (b) of sub-section (5) of Section 77 of the Act further provides that the expressions "demurrage" and "wharfage" used in Clause (a) of sub-section (5) of Section 77 of the Act shall have the meaning assigned to them in clauses (d) and (h) of Section 46-C of the Act. Clause (d) of Section 46-C defines the expression "demurrage". According to the said definition, "demurrage" means, the charge levied after the expiry of free time allowed for loading or unloading a wagon. Clause (h) thereof defines wharfage. According to the definition "wharfage" means the "charge levied on goods for not removing them from railway premises after the expiry of free time allowed for such removal. In the instant case, we are concerned with the consignment consisting of bundles of safety match boxes. Therefore, the consignment was either in the nature of explosive or otherwise fell within the category of a dangerous goods, because it was inflammable. Therefore, the consignment fell within the description of the goods mentioned in sub-section (3) of Section 77 of the Act. As such, the responsibility of the railway administration came to an end on the termination of transit which was much earlier to destruction of consignment by fire which took place on 24-9-1974. We have already pointed out that the consignment arrived at Kankaria on

6-8-1974 at 4-45 p.m. The plaintiff became aware of the arrival of the consignment on 7-8-1974, whereas the consignment came to be destroyed by fire long time after the termination of transit. In the instant case, it does not make any difference even if it were to be held that the consignment in question did not fall under sub-section (3), but fell within sub-section (1) or (2) of Section 77 of the Act, because the consignment came to be destroyed by the fire long time after the expiry of seven days after the termination of transit. The responsibility of the railway administration either as a bailee or as a carrier of goods has been statutorily limited to a period after the arrival of the goods at the destination point by Section 77 of the Act. After the expiry of the period mentioned in subsections (1) & (2), if the case falls under those sub-sections, the responsibility of the railway administration ceases on the expiry of the period of seven days after the termination of transit and on the termination of transit, if the goods or animals fall within sub-section (3) of Section 77 of the Act. Thereafter the railway administration will not be responsible for the loss of the consignment in any manner. This short period of responsibility of a railway administration u/s 77 of the Act appears to have fixed purposely with a view to avoid accumulation of large quantity of goods at the railway station and also in the goods shed, and to enable smooth flow of goods traffic. For a growing economy it is necessary. Fixation of short period of responsibility compels a consignee to remove the goods from the railway yard immediately on arrival or at any rate immediately on receipt of the notice or knowledge of arrival.

14.2. No doubt, Sri Sadashivan, learned Counsel for the respondent-plaintiff placed reliance upon the decisions in *Union of India (UOI) Vs. West Punjab Factories Ltd.*, ; *Juggilal Kamlatpat Oil Mills Vs. Union of India (UOI) and Others*, *Union of India (UOI) Vs. Chaturbhai M. Patel and Co.*, *Union of India (UOI) Vs. Ramesh Cotton Mills Ltd.*, and *Union of India Vs. The United India Fire and General Insurance Co. Ltd. and Another*, *Union of India Vs. The United India Fire and General Insurance Co. Ltd. and Another*, all other decisions were rendered with reference to the provisions of Section 72 of the Act as stood prior to coming into force of the Amendment Act 39/61. In all those decisions the point in question did not arise for consideration. The liability of the railway administration under S. 72 of the Act, as it stood prior to 1-1-1962, as a bailee or as a common carrier was not statutorily limited to any period. However, it was open to the railway administration to limit its liability as a bailee to any period by a special agreement in writing as per sub-section (2) of Section 72 of the Act as it stood prior to 1-1-1962. Therefore, those decisions are not of any help to the plaintiff-respondent. Therefore, we do not consider it necessary to deal with each one of those decisions in detail.

14.3. It is no doubt true that in *United Fire and General Insurance Company's* case the goods were destroyed by fire on 28-2-1971, therefore it was a case which was governed by the provisions of the Act as they stood subsequent to 1-1-1962 and prior to coming into force of the Amendment Act 71/72. The goods that were entrusted to the railway for transport were 50 bales of fully pressed

cotton, therefore the goods fell within the scope of sub-sections (1) and (2) of Section 77 of the Act. The provisions of the Act as they stood subsequent to 1-1-1962 and prior to coming into force of the Act, 71/72, the responsibility of the railway administration even as a bailee during the period from 1-1-1962 to the date of coming into force of the Act No. 71/72 was statutorily limited to a period of 30 days after the termination of the transit. In the aforesaid United Fire and General Insurance Company's case, the goods i.e., 50 bales of fully pressed cotton were entrusted to the Railway on 21-1-1971 for delivery at the Pudukad Railway Station between Cochin and Shoranur, The goods arrived at the Pudukad railway station on 12-2-1971. The same were unloaded on 13-2-1971 and kept adjacent to the goods shed on 28-2-1971, the goods were destroyed by the fire. Thus the goods were destroyed due to fire on 28-2-1971 within a period of 15 days from the date of unloading. Therefore, the question as to whether the liability of the railway administration even as 3 bailee or as a carrier stood extinguished on the date the goods were destroyed due to fire did not arise for consideration because the goods were destroyed within a period of 30 days from the date of arrival. Hence, in that case also the point involved herein was not considered. Therefore, the said decision is also not of any help to the plaintiff.

15. The contention of Sri Sadashivan, learned Counsel appearing for the respondent that Ss. 73 and 77 should be read subject to Ss, 55 and 56 of the Act cannot at all be accepted. S. 55 deals with the subject "lien for rates and other charges" of the railway administration over the goods entrusted to it. Section 56 enables the railway administration to dispose of the goods which are unclaimed. Such disposal has to be made after due notice to the consigner. These two provisions would have been relevant if the goods were existing and the delivery of which had not been taken. The railway administration in exercise of its power under these two provisions could have disposed of the goods and recovered the amount due to it and paid the balance if any to the person entitled thereto. Whereas Section 73 of the Act deals with the general responsibility of a railway administration as a carrier of animals and goods entrusted to it to carry and Section 77 deals with the responsibility of a Railway Administration after and also up to termination of transit after the arrival of goods at the destination point. Thus these two provisions deal with the liability and responsibility of a railway administration towards the goods entrusted to it for transport, and to the persons who entrusted the goods to the railway for transport and those who are entitled to receive them at the delivery point. Whereas, Sections 55 and 56 deal with the right of a railway administration to deal with the goods which are not collected within the time allowed by the persons concerned after they reached at the destination point and to recover the amount due to the railway administration by sale of such goods by following the procedure prescribed therein. Therefore, it is clear that Sections 55 and 56 of the Act have nothing to do with the responsibility of a railway administration as stated in Sections 73 and 77 of the Act. Hence the contention is rejected.

16. While considering point No. 1, we have held that the destruction of goods in

question was due to the negligence of the railway administration. In this case the destruction of the goods took place on 24-9-1974 beyond the period mentioned in Section 77 of the Act. The question that naturally arises for consideration is as to whether the liability of the railway administration to pay damages to the consignor subsisted on the day the goods were destroyed by the fire. Answer to this question will depend upon the determination of the question as to whether the case falls u/s 73 or Section 77 of the Act and if it falls u/s 73 of the Act, whether the period of liability of a railway administration prescribed u/s 77 of the Act governs the case which falls u/s 73 of the Act. No doubt, we have already pointed out that the consignment fell within the description of goods mentioned in sub-section (3) of Section 77 of the Act, therefore, the responsibility of the railway administration came to an end much earlier to 24-9-1974.

17. Now we shall see whether the destruction of the goods in question by the fire falls u/s 73 of the Act, and if so, as it is contended by the appellant that even if the case is covered by Section 73 of the Act, whether the period of liability and responsibility prescribed under sub-section (2) of Section 77 of the Act governs the case. We have, in the earlier portion of this judgment, extracted the provisions of Sections 73 and 77 of the Act. Section 73 of the Act deals with the general responsibility of a Railway Administration as a carrier of animals and goods during the transit. Under this section, the responsibility of a railway administration as a carrier and also as a bailee commences from the movement the goods are entrusted to the railway administration for transit to be carried by railway and continues until the goods are unloaded at the destination point. This is made clear by use of the words "in transit". The point of time and place at which the general responsibility of a railway administration comes to an end u/s 73 of the Act, either as a carrier or as a bailee, the responsibility of a railway administration commences u/s 77 of the Act as a bailee and also as a carrier and continues until the expiry of the periods mentioned in subsections (1), (2) and (3) therein. Thus, the point of time and the place at which the responsibility of a railway administration u/s 73 of the Act terminates the responsibility u/s 77 of the Act commences. Therefore, it is clear that the period of operation and the area of operation of Section 73 of the Act are quite different from that of Section 77. In S. 73 of the Act, the words employed are "in transit", whereas in Section 77 of the Act no such words are used. Therefore, we are of the view that the liability and responsibility of a railway administration during the period when the goods are in transit are covered by Section 73 of the Act. That being so, It is not possible to hold that S. 77 including sub-section (2) of Section 77 governs the responsibility of a railway administration arising u/s 73 of the Act. The case on hand does not fall u/s 73 of the Act as the goods in question were destroyed at the destination point long after the expiry of the period of seven days after the termination of transit.

18. In the instant case, as already pointed out, the consignment reached the destination and was unloaded on 6-8-1974. The consignee took delivery of other two consignments sent along with the consignment in question in the same

wagon under invoice Nos. 2 and 3 on 7-8-1974. However, he did not take delivery of the consignment in question sent under invoice No. 4 on that day even though he was fully aware of the fact that the consignment in question had arrived at the destination and was ready for delivery. Therefore, for the purpose of determining as to when the termination of the transit took place, in the instant case, we can safely proceed on the basis that the termination of transit took place on 7-8-1974. If that be so, the liability of the railway administration came to an end on 7-8-1974 itself because we have held that the goods in question fell within sub-section (3) of Section 77 of the Act. Even assuming that the goods in question fell within sub-section (1) or subsection (2) of S.77 of the Act, the responsibility of the railway administration came to an end on the expiry of seven days from 7-8-1974 i.e., 14-8-1974. Whereas the goods in question were destroyed by the fire on 24-9-1974, long after the expiry of the date on which the liability of the railway ceased. Sub-section (2) of Section 77 of the Act specifically states that the railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of the goods carried by railway arising after the expiry of the period of seven days after the termination of the transit. Sub-section (2) though uses the words "in any case" but it cannot be held to govern, the case falling under sub-section (3) because sub-section (3) employs non-obstante clause. The words "notwithstanding anything contained in the foregoing provisions of this section" abundantly make it clear that sub-sections (1) and (2) cannot be held to govern sub-section (3) because the non-obstante clause employed in sub-sec. (3) gives overriding effect to the provisions contained in sub-sec. (3) over the provisions contained in sub-sections (1) and (2) thereof. Thus in the instant case, the responsibility of the railway administration came to an end on the termination of transit. Even otherwise in the instant case, it does not make any difference because the consignment was destroyed by the fire long after the expiry of seven days after the termination of transit. Therefore, even presuming that the responsibility of the railway administration continued till 14-8-74, the consignment was destroyed by the fire long time thereafter. That being so, whether the railway administration took proper care of the consignment during the period from 14-8-1974 till 24-9-1974, the date on which the consignment was destroyed by fire, becomes immaterial.

19. Accordingly, we answer points Nos. 2 and 3 as follows:

Point No. 2 : "No liability of the appellant existed on 24-9-1974 either as a carrier of goods or as a warehouse keeper or as a bailee as the responsibility of the appellant came to an end in any case on 14-8-1974."

Point No. 3 : The responsibility of a railway administration arising u/s 73 of the Act is not governed by Section 77 of the Act, therefore, the period of liability and responsibility of a railway administration prescribed under subsection (1), (2) and (3) of Section 77 of the Act does not govern the case falling u/s 73 of the Act. The case on hand, as already pointed out, is not covered by Section 73 of

the Act.

20. For the reasons stated above, this appeal has to succeed. It is accordingly allowed. The judgment and decree of the trial Court are set aside. The suit of the plaintiff is dismissed. In the facts and circumstances of the case, we direct the parties to bear their own costs throughout. We make it clear that our decision does not govern the case of liability of a railway administration as where-house keeper under any other contract or under any other law.

21. After we pronounced the judgment, Sri Sadashivan, learned Counsel for the respondent-plaintiff made an oral application under Article 134-A of the Constitution for grant of a certificate for appeal to the Supreme Court. Learned Counsel for the appellant opposed the prayer. We have allowed the appeal on the interpretation placed by us on Sections 73 and 77 of the Indian Railways Act, 1890, The Act is a Central Act. No decision either of the Supreme Court or of any other High Court is brought to our notice construing Sections 73 and 77 of the Act as they stand after their coming into force of Act No. 71/72. Therefore, we are of the view that the appeal involves a substantial question of law of general importance which needs to be decided by the Supreme Court. Hence, we grant the certificate under Article 133 of the Constitution.

22. Order accordingly.